

No. 11749

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER,
JOHN S. PATTEN, HARRIS H. HAMMON, A.
L. BERGERE, J. C. BERGERE, WILLARD
WALLACE, EDNA M. WALLACE, JAMES P.
DELANEY, MARY J. DELANEY and IRVIN
S. BARTHEL,

Appellants,

vs.

HATTIE M. HOUCK, as Administrator of the Estate
of Stanley B. Houck, Deceased, RUBY E. EDLING,
WILNA M. SHEPARD, HATTIE M. HOUCK,
RUTH M. HEBBERD, MINNIE N. McKEN-
ZIE, HOWARD H. McKENZIE, VERONICA K.
GHOSTLEY and H. W. LEWIS,

Appellees.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME II

(Pages 209 to 432, Inclusive)

Upon Appeals From the District Court of the United States
for the Southern District of California
Central Division

FILED

APR 12 1948

No. 11749

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER,
JOHN S. PATTEN, HARRIS H. HAMMON, A.
L. BERGERE, J. C. BERGERE, WILLARD
WALLACE, EDNA M. WALLACE, JAMES P.
DELANEY, MARY J. DELANEY and IRVIN
S. BARTHEL,

Appellants,

vs.

HATTIE M. HOUCK, as Administrator of the Estate
of Stanley B. Houck, Deceased, RUBY E. EDLING,
WILNA M. SHEPARD, HATTIE M. HOUCK,
RUTH M. HEBBERD, MINNIE N. McKEN-
ZIE, HOWARD H. McKENZIE, VERONICA K.
GHOSTLEY and H. W. LEWIS,

Appellees.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME II

(Pages 209 to 432, Inclusive)

Upon Appeals From the District Court of the United States
for the Southern District of California

Central Division

(Testimony of Wayne Hodgson)

Q. And did you have a conversation with him at that time?

A. Well, yes. To make it clear here I was sort of playing detective, you might say. Mr. Jose didn't know who I was and I had been spying on Mr. Jose from an airplane and it is rather funny now to think of it. I walked up and I asked him what he was doing, and I knew very well what he was doing, and he told that he was doing assessment work and at that time he began to run down Mr. Lewis, whom I knew very well at the time, and he said some very uncomplimentary things in Mr. Lewis' direction. In fact, I remember definitely he was going to send him to jail and he was a blackmailer. That I can remember because Mr. Jose was very fiery on that subject.

Q. Did he attempt to keep you from going on the property?

A. No, not at all. He was very hospitable. He explained what the clay was and just what he was doing.

Q. Is that all of the conversation that you had with him? A. Yes, I believe that is all.

Mr. Hedges: You may cross examine.

The Court: Any questions?

Mr. Painter: Yes, but our cross examination will [180] probably take at least a half hour.

The Court: All right. So long as I promised to let you go at 4:30 I will keep my word. We will take the regular adjournment until tomorrow morning.

Mr. Hedges: I wonder if I may say this? I have one further witness here, the only one from out of town and he will take only a few minutes. I do not like to take witnesses out of order, but we could get rid of him and send him back home. It will take just a couple of minutes.

(Testimony of Wayne Hodgson)

Mr. Painter: We want to cross examine this gentleman. We have not waived our right to cross examine him.

Mr. Hedges: May I have the indulgence of the court for just a moment?

The Court: You may step down but you will have to come back tomorrow morning at ten o'clock.

Mr. Hedges: If your Honor would permit it, Mr. Fulmer is a school teacher down in Imperial and he would like to get back.

The Court: All right, Mr. Fulmer, take the stand.

Mr. Painter: Mr. Fulmer and Mr. Hodgson, I might state, fall in the same classification. The cross examination of each of them will probably be quite extensive.

Mr. Hedges: You mean as to Mr. Fulmer, too?

Mr. Painter: Yes.

Mr. Hedges: If you are going to cross examine him [181] tonight we will be here the rest of the night.

Mr. Painter: I thought in fairness I had better make that statement.

The Court: He didn't do any work. He merely witnessed the locations.

Mr. Painter: Yes; he was with Mr. Hodgson practically all of the time, your Honor. It is those two witnesses who were the principal locaters.

The Court: I am sorry, gentlemen. We will adjourn until ten o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., a recess was had until 10:00 o'clock a.m., Wednesday, June 4th, 1947.)
[182]

Los Angeles, California, Wednesday, June 4th, 1947.
10:00 A. M.

The Court: Cause on trial.

The Clerk: 6105, Houck and others versus Jose and others.

Mr. Hedges: Ready, your Honor.

Mr. Painter: Ready, your Honor.

Mr. Hedges: Mr. Hodgson, will you take the stand?

WAYNE H. HODGSON,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Painter:

Q. Mr. Hodgson, what time of the day did you arrive on the property on the morning of September 7th, 1945?

A. Sonetime before 10 o'clock, about a half hour, I imagine. Around there.

Q. To your observation was there anyone else within sight of you at the time you first arrived at this property?

A. I don't believe so. To the best of my memory, no.

Q. What medium did you use to get to the property?

A. A command car, Army type.

Q. Army type command car. And where did you take up your location when you first arrived at the property? [187]

A. I took it up on the east corner of the property.

Q. Now, you mean by that the easterly boundary line of the property described on Exhibit 1? A. Yes.

(Testimony of Wayne Hodgson)

Q. Which quarter section did you take up your position on when you first arrived at the property?

A. Well, I drove down the road upon entering the property. I drove down the road, I should say, approximately to the center of the property and looked around. There is sort of a clay hill and the road goes over the top of it and I drove up there and looked around. I was looking for Mr. Lewis and seeing no one on the property I rather suspect I drove back to the easterly boundary and waited there.

Mr. Hedges: Pardon me, Mr. Painter. Did you say the 6th of September, or did you mention a date?

Mr. Painter: I mentioned the 7th, 7th of September.

Q. By Mr. Painter: You understood my question to be referable to the 7th of September? A. Yes.

Q. Now, this Plaintiffs' Exhibit 1 has been marked with the names of two claims—Temperate No. 4 and Tropical No. 2. On which one of those quarter sections did you take up your position after returning from the center of the property?

A. I took it up on the dividing line between the two.

[188]

Q. Between the two? And later that morning did anyone else drive up to the property in an automobile or motor vehicle of any kind? A. Yes.

Q. And describe the first car which drove up to the property?

A. Well, to the best of—I can't tell you truthfully what was the first car. I believe it was Mr. Lewis.

Q. And was there any other car came up to the property and passed you at this point which you have designated as the easterly portion of the property, that morning before ten o'clock? A. I believe so, yes.

(Testimony of Wayne Hodgson)

Q. And describe that car for us.

A. Well, that was a car, a General Motors make of around '37, I believe, and if I remember right it was blue in color. That is all I can remember.

Q. Did you observe where that car drove to after passing you?

A. Well, yes, I believe it drove to the center of the property. You see there, Mr. Painter—

Q. You can step down, Mr. Hodgson, and point it out to me.

A. I believe it drove up into here and stopped. Of course now I was looking for Mr. Lewis, you understand, and [189] I wasn't paying too much attention to this car, but to the best of my knowledge I did look and watch it. I was interested in it, naturally, and I believe it stopped somewhere along in here.

Q. You are pointing to the westerly line of the claim known as Temperate No. 3 on Plaintiffs' Exhibit 1, is that correct?

A. No. I believe it was over here, sir, on the easterly.

Q. On Torrid No. 4? A. Torrid No. 4, yes.

Q. Now, after Mr. Lewis drove up to the property where did you go?

A. Well, I didn't go anywhere then. Mr. Lewis was—he arrived some minutes before ten o'clock. We were supposed to file at ten, and he gave me my instructions to file on Tropical No. 2.

Q. Wait just a second before we get to that point. I just wanted to know where you went. Did you remain for some long or short period of time in relatively the same position on the easterly side of the property?

A. Yes.

(Testimony of Wayne Hodgson)

Q. And did Mr. Lewis leave you at that point sometime before ten o'clock? A. Yes. [190]

Q. And in which direction did he drive?

A. He drove onto the property in a westerly direction.

Q. Now, did anyone stay with you at this point which you have just described? A. Yes.

Q. And who stayed with you?

A. I believe it was Mr. V. G. Fulmer.

Q. Now, of your own recollection and without examining any of the instruments which were introduced in evidence, can you tell me the time of day that it was that you and Mr. Fulmer and—I mean by that either you or Mr. Fulmer—I am not interested for the time being in who actually posted the claim on the property—posted the first notice of location.

A. Yes, very definitely. It was ten o'clock, the first one.

Q. And is there an exhibit in evidence which also refreshes your recollection as to that?

A. I believe so.

Q. And that exhibit is Plaintiffs' Exhibit No. 22, is it not? A. That is right.

Q. Now, will you observe that on the face of this notice of location which affects Plaintiffs' Temperate No. 4, there appears on one place on the front of the exhibit [191] the figures "10:00 a.m." A. Yes.

Q. In whose handwriting is that?

A. That is in my handwriting.

Q. And under the signature "V. G. Fulmer" again appears 10:00 a.m. In whose handwriting is that?

A. Mr. Fulmer's.

(Testimony of Wayne Hodgson)

Q. And did you and Mr. Fulmer place the figures "10:00 a.m." on there immediately after posting the notice on Temperate No. 4?

A. Well, now, do you mean—

Q. I simply mean this, Mr. Hodgson, while you were on the claim, before you went to the next claim to post, did you and Mr. Fulmer place on the claim the figures "10:00 a.m."? A. Yes.

Q. Now, which claim did you go to next to post?

A. We went to Tropical No. 2.

Q. And that is the one directly to the south of Temperate 4, correct? A. Correct.

Q. And at what time of the day did you post, you or Mr. Fulmer post a notice of location on Temperate—Tropical No. 2?

A. Well, I should say it was around 10:03 or 10:05—[192] just how fast we could run over there.

Q. Well, there is an instrument in evidence from which you could refresh your recollection as to the time that you did post it, is there not? A. Yes.

Q. And that is Plaintiffs' Exhibit No. 24, is that correct? A. Correct.

Q. And did you and Mr. Fulmer respectively write on the face of that instrument the figures "10:05 a.m." at or about the time you posted the notice?

A. That is right.

Q. Now, after having posted the notice on Tropical No. 2 to what claim did you go next to post a notice of location? A. (No answer.)

Q. Now, I might state this, that as far as I am concerned in this cross examination, unless the court tells us otherwise, it is perfectly permissible for you to examine

(Testimony of Wayne Hodgson)

the exhibits which are in evidence to refresh your memory before answering the question.

A. Well, let me state, if I may, of course that is all done from memory. You recall when the defendants took my deposition we threshed that all out and the way I have it in my deposition is logical and to the best of my memory the [193] way we went.

Q. Well, now, that is the same thing I want you to do on the stand. I think you have all the exhibits before you now from which you can determine that matter the same as you had when your deposition was taken.

Will you refresh your memory by looking at the exhibits? And I might state I have tried to place them in sequence of time so that they will be quickly available. So, will you give us the next one which is your present recollection that you posted after posting Tropical No. 2?

A. When I call these off would you please point them out on the map for me?

Q. I will, sir.

A. After posting on Tropical No. 2 and Temperate No. 4, I believe we went to Tropical No. 3.

Q. I am pointing to Tropical No. 3. Now, before you proceed further did you or Mr. Fulmer place on the notice of location the approximate hour or put the exact time that the notice was posted? A. Yes.

Q. And what did you place on the claim to indicate that? A. A duplicate of this.

Q. No, I mean what did you write on the claim?

A. I beg your pardon. "10:30 a.m." [194]

Q. And did that indicate the hour at which and the minute at which that claim was posted? A. It did.

(Testimony of Wayne Hodgson)

Q. Now, what claim did you go to next?

A. Well, we must have gone to Frigid No. 4.

Q. I am pointing to Frigid No. 4.

A. Yes, Frigid 4.

Q. And why do you say you "must have gone to Frigid No. 4"?

A. Because we were in a great hurry. We were trying to get through as quickly as possible and it was just a few steps across the quarter section dividing line to Frigid No. 4.

Q. And does Plaintiffs' Exhibit 27 indicate that that was what you did? A. Yes.

Q. And what is there on the claim to indicate that?

A. "10:32 a.m."

Q. And that is the approximate hour and minute?

A. Yes.

Q. At which you or Mr. Fulmer posted that claim?

A. That is correct.

Q. Now, can you tell us where you went next to post a notice? A. We went to Tropical No. 4. [195]

Q. Now, I am pointing to Tropical No. 4 on the map.

A. Yes.

Q. At what time did you and Mr. Fulmer post the notice of location on Tropical No. 4?

A. At 11:25 a.m.

Q. And you got that information by observing Plaintiffs' Exhibit No. 32? A. Yes, sir.

Q. And the hour and minute thereon is the source from which you refreshed your recollection?

A. That is correct.

Q. Then where did you go?

A. We went to Temperate No. 2.

(Testimony of Wayne Hodgson)

Q. And I am pointing to Temperate No. 2. At what time did you or Mr. Fulmer post the notice of location on that property? A. 11:40 a.m.

Q. And from what source did you get that information? A. From Plaintiffs' Exhibit 33.

Q. And that is the hour and minute which appears on that claim, is it not? A. That is correct.

Q. Now, where did you go after posting Temperate No. 2? Before you give us the claim will you tell us the route that you took? I am doing that primarily, Mr. [196] Hodgson, because of the fact that one claim does not bear a time of posting and I wanted to clear that subject up at this time. Now, what course did you take to go to your next posting, place of posting? First, before you go further than that, did you not go back to the highway from Temperate No. 2?

A. That is correct.

Q. And then did you not proceed on that highway westerly to the westerly line of the property?

A. That is correct.

Q. Now, when you got to the westerly line of the property where did you go, according to your best recollection? A. Well, we filed on Torrid No. 3.

Q. And that one I am pointing to now?

A. That is correct.

Q. And at what hour and minute did you post a notice of location at that point? A. 12:25 p.m.

Q. And you gained that information from Plaintiffs' Exhibit— A. 34.

Q. And the hour and minute that appears thereon is the hour and minute you and Mr. Fulmer were on the property with a Mr. Bradshaw, is that correct? [197]

A. That is correct.

(Testimony of Wayne Hodgson)

Q. By the way, on this claim appears for the first time, I believe, the name of Mr. Bradshaw—that is on any notice of locations which were posted by you as I understand it, is that correct?

A. I believe that is correct, yes.

Q. In other words, is it not a fact that on your way back from Temperate No. 2 across the property on the roadway, you picked up Mr. Bradshaw at a point which I am pointing to on the map at the present time at about that location?

Mr. Hedges: Would you indicate that point for the record?

The Witness: Yes, that is true where you are indicating to the best of my knowledge.

Q. By Mr. Painter: I have indicated, have I not, the point at which the quarter section lines of Torrid 4, Temperate 3, Tropical 1, and Frigid 2 intersect, is that correct, Mr. Hodgson?

A. I believe it is a section line, isn't it?

Q. Yes, it is the very center of the property.

A. That is correct.

Q. Now, where did you go after posting Torrid No. 3?

A. We went to Frigid No. 1.

Q. And who was with you at that time?

A. Mr. Bradshaw and Mr. Fulmer.

Q. And at what time of the day, hour and minute, did [198] you and/or Mr. Bradshaw and Mr. Fulmer post the notice on Frigid 1? A. At 12:30 p.m.

Q. And from what source did you get that hour and minute? A. From Plaintiffs' Exhibit 35.

Q. And there appears the figures 12:30 p.m. in three places on that claim, is that correct?

A. That is correct.

(Testimony of Wayne Hodgson)

Q. And after one of them is in your handwriting?

A. That is correct.

Q. One of them is in Bradshaw's handwriting and one is in Fulmer's handwriting?

A. That is correct.

Q. Now, where did you go after posting the claim on Frigid 1? A. We went north to Torrid No. 1.

Q. Now, before we leave this point will you examine the claim on Frigid 3 and you noted of course that it did not bear a time. Is it your present recollection that Frigid No. 3 was a notice of location that was posted on Frigid 3 before you posted Torrid 3 and Frigid 1, or after you posted Torrid 3 and Frigid 1, or after you posted Torrid 1?

A. Well, I believe that we posted Frigid No. 3. Would [199] you point to it there? Yes, I believe we posted Frigid No. 3 before we posted Torrid No. 1.

Q. In other words, then, as I gather it, your next move was from Frigid 1 down to Frigid 3, is that correct?

A. Let me think just a minute here, Mr. Painter. Like I said before, we were in a command car and I remember that the road to Frigid No. 3 from Torrid No. 2 or Frigid No. 1 was a very good road.

Q. That was Torrid 3 you are speaking of?

A. Yes.

Q. Or Frigid 1? Frigid 1 was a good road down to Frigid 3? A. Yes.

Q. And you were able to drive down to that in the command car?

A. I would say we were able to drive down to that at the rate of 20 miles per hour.

(Testimony of Wayne Hodgson)

Q. Now, when you went up to Torrid 1, however, you had to walk up there, didn't you?

A. (No answer.)

Q. I am trying to orient you here now, Mr. Hodgson. I am not trying to confuse you. I want your best recollection as to the sequence of the postings here so I can get some approximate time and I don't want to lead you but I want you to take into consideration the time element [200] involved.

A. I understand. That is what I am trying to figure out here. I can't recall whether we walked that or drove it. I know I have driven it several times later on.

Q. Let us handle it this way then. You will note that the time on Exhibit 36 written in the handwriting, I assume, of Hodgson, Bradshaw and Fulmer, is 1:15. Now, is that the approximate time that you posted the notice on Torrid No. 1? A. Yes.

Q. Is it your present recollection that from the point which I am designating on the map, which is the westerly point where the quarter section lines of Torrid 3 and Frigid 1 meet, that you walked to the point where you posted Torrid 1?

A. I don't think we did, Mr. Painter.

Q. You do not think you did?

A. No; because that is a mile over sandy country and according to the time here it took us 45 minutes. If we didn't post Frigid No. 3 in the meantime I rather suspect, in fact I am very sure that we drove to that. Now, Mr. Fulmer, of course, was with me and maybe he will have something else to say about that.

Q. All right, that is your best recollection?

A. That is my best recollection, yes. [201]

(Testimony of Wayne Hodgson)

Q. Then am I to understand that your course after posting Frigid 1 was down to Frigid 3 in the command car, back to the neighborhood of the postings on Torrid 3 and Frigid 1 and then northerly to the point where you posted Torrid 1?

A. That is correct to the best of my knowledge.

Q. And approximately what time of the day, hour and minute, is it your present recollection that you posted the notice on Frigid 3; and will you examine the exhibits before you answer that question, and give us your best recollection—estimate?

A. I would say it approximately was 12:45 p.m.

Q. Now, may I take you step by step here and see if this is not the true and correct statement of the course which you took that morning and if I am incorrect in any respect will you advise me as we are going along, stop me when I reach that point.

You took up your position on the property at shortly before ten o'clock on the corner of the claim known as Temperate 4 at the point which I have pointed to with the pointer, is that correct? A. That is correct.

Q. You then went across the highway to the point which I am now pointing to on Tropical 2, is that correct?

A. That is correct.

Q. You then went back to your automobile and drove in [202] a westerly direction until you arrived at the point which I am now pointing to on the diagram and then drove in a westerly, in a southeasterly direction to a point which I am now pointing to, is that correct?

A. That is correct.

Q. You then returned by approximately the same route to the point which I am now pointing to, is that correct? A. That is correct.

(Testimony of Wayne Hodgson)

Q. You then drove easterly until you reached the easterly side of the property and then drove in a south-easterly direction to a point which I am now pointing to on the map, is that correct?

Mr. Hedges: I don't so understand his testimony, Mr. Painter.

Mr. Painter: What is it?

Mr. Hedges: To Frigid No. 4.

Mr. Painter: I will correct that. Just a second.

The Witness: I might say right here now that, of course, my memory was very vague as to that but—

Q. By Mr. Painter: You had better let me give you one point that I missed, that Mr. Hedges brought to my attention. We had reached the point which I had pointed to, being the point in the center of the property where Temperate 3 and Torrid 4 and Frigid 2 and Tropical 1 meet. Then I took you in a southeasterly direction to Tropical 3 and then [203] over to Frigid 4. Now, I take you back to the highway, to that same point in the center of the property. Is that approximately correct?

A. Well, yes, it would be approximately correct, although, of course, we had to go down washes.

Q. I understand that but I am giving you the general direction, Mr. Hodgson.

A. I might add to that we usually come out right in the center. You understand the center of that section now goes easterly, easterly right in there and that is where we usually came out.

Q. You usually came out about here?

A. Yes. I would say a little farther east.

Q. About in there? A. Yes.

(Testimony of Wayne Hodgson)

Q. Now then, you proceeded in an easterly direction and to the easterly line of the property and then proceeded in a southeasterly direction to Tropical 4, did you not? A. I believe so.

Q. And then back by the same route to the roadway and then northerly to the property described as Temperate 2, is that approximately correct?

A. Approximately correct.

Q. Then back to the highway then in a westerly direction, across the highway to the westerly line of the property, [204] is that correct?

A. Yes, I believe so.

Q. Then after the posting on Torrid 3 you go across to Frigid 1 and then you drove southerly to Frigid 3?

A. Right. .

Q. Am I correct so far? A. So far, yes.

Q. Then back to the highway and northerly to Torrid 1? A. I believe that is right.

Q. Then back to the highway, is that correct?

A. Yes, back to the highway and then I think back to the center of the property, if you want to go that far.

Q. After you reached the highway, at some point along here, then you drove easterly on the property, is that right? A. I believe that is right.

Q. Now, Mr. Fulmer was with you when you arrived at each one of the claims which bear his signature, was he not? A. That is correct, yes.

Q. I don't know whether I asked you this or not, but it may be a little repetitious. Is it your present recollec-

(Testimony of Wayne Hodgson)

tion you picked up Bradshaw somewhere along the roadway when you were coming back from Temperate 2, headed for Torrid 3 and Frigid 1?

A. You asked that question. [205]

Q. I did? A. Yes.

Q. And that was the situation?

A. That is right.

Q. Then Mr. Bradshaw stayed with you from the time you picked him up until you arrived back to somewhere around the center of the property after having posted Torrid No. 1, is that correct?

A. Will you point out Torrid No. 1 there?

Q. Right here.

A. I believe so, yes, according to these.

Q. Mr. Hodgson, would you step down and with this blue pencil mark approximately the location of your notice of location on Temperate 4. Now, will you mark that with the figure 1 and then put a circle around it?

Mr. Hedges: Will you instruct the witness to bear in mind that map is drawn to scale because he might otherwise just put it anywhere and it wouldn't reflect the proper location.

Mr. Painter: I might state at this point I am not after the fixing of these points as to scale. We will understand that ahead of time.

Mr. Hedges: Position is all you want?

Mr. Painter: Just position is all I want.

The Witness: It is one of these. I believe that is the [206] one.

(Testimony of Wayne Hodgson)

Q. By Mr. Painter: Now, you have circled the red square which now is marked 1, is that correct?

A. That is correct.

Q. Now, go to Tropical 2 and do the same thing, please. Now, draw a little line out and put a figure 2 right alongside of it. Put a figure 2 there.

Now, will you go down to Tropical 3 and do the same thing on Tropical 3?

A. You want the figure 3 there?

Q. Yes. When you get through marking that with a 3 will you go to Frigid 4 and do the same thing on Frigid 4 and mark it with a 4? Now, will you go to Tropical 4 and do the same thing and mark that with a 5?

Now, will you go to Temperate 2 and do the same thing there and mark it with a 6?

Now, will you go to Torrid 3 and do the same thing and mark it with a 7?

Now, will you go to Frigid 1 and do the same thing and mark it with an 8?

Now, go to Frigid 3 and do the same thing and mark it with a 9; and to Torrid 1 and do the same thing and mark it with a 10.

That is all the cross examination.

The Court: Any redirect examination? [207]

Mr. Hedges: No, no redirect examination.

The Court: Step down. Call your next witness.

Mr. Hedges: Mr. Fulmer.

V. G. FULMER,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Virgil G. Fulmer.

Direct Examination

By Mr. Hedges:

Q. Where do you reside, Mr. Fulmer?

A. 865 Olive Avenue, El Centro, California.

Q. What is your business or profession or occupation?

A. I am in public school work.

Q. And did you go out on the project described in Plaintiffs' Exhibit 1 on the 6th of September, 1945?

A. Yes, sir.

Q. Do you recall about what time of day?

A. Well, I think it was around seven o'clock in the morning. They had planned on being out there around seven o'clock and I think we arrived at that time or shortly after.

Q. And who else was there besides yourself, Mr. Fulmer, if you can recall?

A. Well, in the car that I rode in Mr. Bradshaw of [208] El Centro and Mr. Lewis and Mr. Houck, and when we arrived at the property there were some other people there.

Mr. Painter: May we at this time have it understood, your Honor, we have the same objections as we interposed yesterday to anything relative to what took place on the 6th of September 1945?

The Court: All right.

(Testimony of V. G. Fulmer)

Q. By Mr. Hedges: Was Mr. Hodgson there?

A. Hodgson was there. He was either on the property or at the edge of the property when we arrived.

Q. I will show you Plaintiffs' Exhibit 14 and ask you to examine it and see whether or not you have ever seen that document before? A. Yes, sir.

Q. And is that your signature at the bottom of it under the heading "Witnesses"? A. Yes, sir.

Q. V. G. Fulmer, September 6th, 1945?

A. Yes.

Q. 2:16 p.m.? A. Yes, sir.

Q. And that is in your handwriting and the date and time are in your handwriting?

A. That is right, sir.

Q. And did you witness the filing of the claim on [209] that location known as Torrid No. 1 on September 6th, 1945? A. Yes, sir.

Q. Did you see Mr. Lewis post the location and—strike that. Was there a duplicate of Plaintiffs' Exhibit 14 with you and Mr. Hodgson and Mr. Lewis at the time this was posted?

A. There were two copies. This looks like the duplicate here.

Q. Was the duplicate of this instrument actually placed in the glass jar that you heard testified to here yesterday?

A. Well, it was either the duplicate or the original.

Q. It was a document the same as the one I am now showing you? A. That is right.

Q. And you saw Mr. Lewis place that in the glass jar and you witnessed it by signing your name as did Mr. Hodgson in your presence, is that correct?

A. Yes, sir.

(Testimony of V. G. Fulmer)

Q. Now, were you also out on the same property on September 7th, 1945? A. Yes.

Q. Which was the following day? A. Yes, sir.

Q. And were the same parties present at that time? [210]

A. Well, some of them who were there on the 6th. I don't believe Mr. Hough was there on the 7th.

Q. Was Mr. Lewis there?

A. Mr. Lewis was there.

Q. And Mr. Hodgson? A. Yes, sir.

Q. And yourself? A. Yes, sir.

Q. Now, the only claim that you had anything to do with, as I understand on the 6th, was the one that I have just asked you about, Plaintiffs' Exhibit 14, is that correct?

A. Well, I am not positive about that. My position was as a witness to the filing of the claims only.

Q. Now, I show you Plaintiffs' Exhibit 22, which is a location notice affecting the Southeast Quarter of Section 21, the claim known as Temperate No. 4. I call your attention to the signature at the bottom of the page under the heading "Witness: V. G. Fulmer, September 7th, 1945, 10:00 a.m." Is that your signature?

A. That is right.

Q. Did you sign it on the date that it bears?

A. Yes, sir.

Q. And you timed it at that time? A. Yes, sir.

Q. And did you witness Mr. Hodgson's—strike that. [211] Was there a duplicate of this instrument in your possession at that time? A. Yes.

Q. And was this duplicate instrument placed in the glass jar? A. Yes.

Q. At the location? A. Yes.

(Testimony of V. G. Fulmer)

Q. And you so witnessed and there were no other witnesses beside yourself? A. No.

Q. I show you Plaintiffs' Exhibit 24, which is a location notice affecting the Northeast Quarter of Section 28 on a claim known as Tropical No. 2, dated September 7th, 1945, incidentally, as was the last exhibit that I showed you, No. 22. A. Yes.

Q. And calling your attention to the signature appearing down at the bottom of the page under the heading "Witnesses: V. G. Fulmer, September 7th, 1945, 10:05 a.m." and I ask you if that is your signature?

A. Yes, sir.

Q. And did you witness the filing of the duplicate of this claim at the time that the instrument bears?

A. Yes, sir. [212]

Q. The hour and the date? A. Yes, sir.

Q. I show you Plaintiffs' Exhibit 26, which is a location notice affecting the Southwest Quarter of Section 28 on a claim known as Tropical No. 3, dated September 7th, 1945, and call your attention to the signature appearing at the bottom of the page under the heading "Witnesses: V. G. Fulmer, September 7th, 1945, 10:30 a.m." and ask you whether that is your signature?

A. It is.

Q. And did you sign your signature on the date that the instrument bears, September 7th, 1945?

A. Yes, sir.

Q. And at the time and at the hour the instrument bears, 10:30 a.m.? A. Yes, sir.

Q. And was the duplicate of that instrument placed in the glass jar on the location? A. Yes, sir.

Q. I now show you Plaintiffs' Exhibit 27, which is a location notice affecting the Southeast Quarter of Sec-

(Testimony of V. G. Fulmer)

tion 29, on a claim known as Frigid No. 4, dated September 7th, 1945, and call your attention to the signature appearing at the bottom of the page under the heading "Witnesses: V. G. Fulmer, September 7th, 1945, 10:32 a.m." and ask you whether [213] or not that is your signature? A. It is, yes, sir.

Q. And did you sign the instrument on the date it bears and the hour it bears? A. That is right.

Q. And was a duplicate of that instrument placed in the glass jar on the location? A. It was.

Q. And in your presence? A. That is right.

Q. I show you Plaintiffs' Exhibit 32, which is a location notice affecting the Southeast Quarter of Section 28 on a claim known as Tropical No. 4, dated September 7th, 1945. I call your attention to the signature at the bottom of the page under the heading "Witnesses: V. G. Fulmer, September 7th, 1945, 11:25 a.m.," and ask you whether or not that is your signature?

A. Yes.

Q. And did you sign the instrument on the date that it bears and at the hour? A. Yes, sir.

Q. That it bears? A. That is right.

Q. And was a duplicate of that instrument placed in the glass jar on the location? A. Yes, sir. [214]

Q. I show you Plaintiffs' Exhibit 33, which is a location notice affecting the Northeast Quarter of Section 21 on a claim known as Temperate No. 3, dated September 7th, 1945. I call your attention to the signature appearing at the bottom of the page under the heading "Witnesses: V. G. Fulmer, September 7th, 1945, 11:40 a.m.," and ask you whether or not you signed it? Is that your signature? A. Yes, sir.

(Testimony of V. G. Fulmer)

Q. And did you sign it on the date that it bears? And at the approximate hour? A. Yes, sir.

Mr. Hedges: That should be Temperate No. 4, Mr. Reporter.

Q. By Mr. Hedges: And a duplicate of this, I believe you said was placed in the jar at this location?

A. Yes, sir.

Q. I now show you Plaintiffs' Exhibit 34, which is a location notice affecting the Southwest Quarter of Section 20, on the claim known as Torrid No. 3. It is dated September 7th, 1945. I call your attention to the signatures appearing at the bottom of the page under the heading "Witnesses: V. G. Fulmer, September 7th, 1945, 12:25 p.m.," and W. W. Bradshaw, September 7th, 1945, 12:25 p.m., and ask you whether or not the signature of V. G. Fulmer is your signature? [215] A. It is.

Q. And did you sign it upon the date that the instrument bears and at about the approximate hour it bears?

A. That is right.

Q. And did Mr. Bradshaw sign in your presence and at the same time? A. Yes, sir.

Q. And was a duplicate of this instrument placed in the glass jar on the location? A. Yes, sir.

Q. I show you Plaintiffs' Exhibit 35, which is a location notice affecting the Northwest Quarter of Section 29 on a claim known as Frigid No. 1, dated September 7th, 1945. I call your attention to the signatures appearing under the heading "Witnesses" at the bottom of the page—W. W. Bradshaw, September 7th, 1945, 12:30 p.m., and V. G. Fulmer, September 7th, 1945, 12:20 p.m., and ask you whether or not the signature V. G. Fulmer is your signature? A. It is.

(Testimony of V. G. Fulmer)

Q. And did you sign the instrument on the date that it bears and at the approximate hour? A. Yes, sir.

Q. And did Mr. Bradshaw sign in your presence?

A. Yes, sir.

Q. At or about the same time? [216]

A. Yes, sir.

Q. And was a duplicate of this notice posted in a glass jar—placed in a glass jar on the location?

A. Yes, sir.

Q. I show you Plaintiffs' Exhibit 36, which is a location notice affecting the Northwest Quarter of Section 20 on the claim known as Torrid No. 1, dated September 7th, 1945. I call your attention to the signatures appearing at the bottom of the page under the heading "Witnesses: W. W. Bradshaw, September 7th, 1945, 1:15 p.m., and V. G. Fulmer, September 7th, 1945, 1:15 p.m." and ask you whether or not the signature "V. G. Fulmer" is your signature? A. Yes, sir.

Q. Did you sign it on the date the instrument bears?

A. Yes, sir.

Q. And at about the approximate hour?

A. Yes, sir.

Q. Did Mr. Bradshaw sign in your presence?

A. Yes, sir.

Q. And at the same time? A. Yes, sir.

Q. And was a duplicate of this instrument placed in the glass jar on the location? A. Yes, sir.

Q. Now, is this the sequence of the postings that I [217] have related here to you? In other words, did you post these claims in this sequence?

A. Well, the time on it that they were posted here will tell you.

(Testimony of V. G. Fulmer)

Q. That refreshes your memory as to how you posted them? A. That is right.

Mr. Hedges: You may cross examine.

The Court: Before you begin the cross-examination we will take a short recess.

(Short recess.)

The Court: You may proceed.

Cross-Examination

By Mr. Painter:

Q. Mr. Fulmer, you were present in court while Mr. Hodgson was testifying, were you not?

A. Part of the time.

Q. Were you present this morning when he was designating the course by numbers which he took when posting on the morning and afternoon of the 7th of September, 1945?

A. I saw Mr. Hodgson making some marks on the plat that you have there on the blackboard. I didn't know what they were.

Q. Well, to simplify this question—

The Court: He gave a numerical order to indicate the [218] course that you traveled from one to ten.

Q. By Mr. Painter: I will point those out on the diagram so you will know where each number is located.

A. Yes, sir.

Q. One to two, to 3, to 4, to 5, to 6, to 7, to 8, to 9, to 10.

A. To the best of my recollection that is the sequence of the filings we made.

Mr. Painter: That is all, thank you very much.

Mr. Hedges: Step down, Mr. Fulmer.

I will call Mr. Witmer.

PAUL B. WITMER,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Paul B. Witmer.

Direct Examination

By Mr. Hedges:

Q. Where do you reside, Mr. Witmer?

A. Santa Ana, California.

Q. What is your business, profession or occupation?

A. I am the acting manager of the Bureau of Land Management.

Q. Is that what is commonly known as the General Land [219] Office for this district?

A. Formerly, yes, formerly known as the District Land Office.

Q. And how long have you been so engaged in that occupation? A. 12 years.

Q. And as such director do you have under your jurisdiction and supervision and control the records of the Land Office for this district? A. I do.

Q. Do you have in your possession and with you a map-book showing the area as described on the board here in Plaintiffs' Exhibit 1, being Sections 20, 21, 28 and 29, Township 14 South, Range 12 East, San Bernardino Meridian? A. I do.

Q. Now, will you turn to the page of the book that indicates that particular area, please? You are indicating that there are two pages in your official records that describe the area that I have just indicated.

A. That is right.

(Testimony of Paul B. Witmer)

Q. Now, will you turn to the first page and will you tell me is there anything on this—strike that. As part of your records of the Department of Land do you indicate on the marginal side of the record any orders or memorandums that are received from the Department of Interior or from the [220] President or any Congressional orders? A. We do.

Q. Is that done in the ordinary course of the business of your office? A. Yes, sir.

Q. Were these four sections of land, 20, 21, 28 and 29, of Township 14 South, Range 12 East, opened for entry on or before September 7th, 1945?

A. Well, they were, under the first form they were—under the first form all withdrawn.

Q. Will you tell me if your records indicate when the lands were withdrawn from entry if they were?

A. Well, it was all withdrawn, the first form, on the 10-22-20.

Q. That is October 22, 1920? A. That is right.

The Court: Who made that withdrawal? I think it was a President Coolidge withdrawal. That has come up several times.

Q. By Mr. Hedges: Will you read me what you are indicating?

Mr. Wood: I think this was a Department of Interior withdrawal—the Secretary of the Interior rather than the President.

Q. By Mr. Hedges: Will you read me what is contained [221] there?

A. "All of the township withdrawn by the first form by F." We refer to that, the number of the letter—10-22-20, and the Act 1702, Order dated 10-19-20.

(Testimony of Paul B. Witmer)

The Court: The reference is to the Act of Congress under which the withdrawal was made?

The Witness: That is right.

Mr. Wood: It was a general statute.

Q. By Mr. Hedges: And reference to an order dated October 19, 1920, is that correct?

A. That is right.

Q. Then was there any re-opening of that land for entry and if so when? As indicated by your official records?

A. Well, there has been no re-opening.

Q. Well, don't your records indicate it was re-opened?

A. Let me check this just a minute. There was another withdrawal by the War Department.

Q. All right, will you read what your records indicate in that respect?

A. That was an Executive Order, 82141—no, that was revoked by the Secretary, his order of July 6, 1945.

Q. In other words, do your records indicate that it was withdrawn by the War Department to be used for combat firing ranges and maneuvering purposes on August 21, 1941? And then re-opened by— [222]

A. That is right.

Q. By an order of the—

A. In regard to the war.

Q. Order of the Secretary of the Interior by an order dated July 6th, 1945? A. That is correct.

Q. Now, from the period from October 19, 1920 to July 6th, 1945, was the land opened for entry or for the filing of any mining claims? A. It was not.

Q. In other words, the first date that it was open for entry would be pursuant to the order of July 6th, 1945, is that correct? A. That is correct.

(Testimony of Paul B. Witmer)

Q. Are you familiar with the order of July 6th, which was the order of the Secretary of the Interior, as to the time element as to when that order would become effective? Do your records— Can you refresh your memory from the records regarding that?

A. I don't know that it is in this book. I would have to check.

Q. What do the records indicate on that, Mr. Witmer?

A. Jurisdiction to be vested in the Department of the Interior under order of 10-19-20, on the 63rd day from July 8th at 10:00 a.m. the land will be subject to mineral [223] locations subject to stipulations listed by order July, K.

Q. That is an 8 crossed out?

A. July 6th-K, 82545 to mineral locations. Correction in the date should be made to read "July 6th" instead of July 8th.

Q. And the words "Federal Register"?

A. Federal Register, yes.

Q. Now, do the records of your office indicate that anyone applied for—applied to your office for a mining location at any time between October 19th, 1920 and prior to September 6th, 1945?

A. I am afraid I can't answer that question without going back and checking the records.

Q. Let me put it this way: Did you notify anyone, did your office notify anyone subsequent to October 19th, 1920, that the land was withdrawn? A. Yes, sir.

Q. Do you recall when that was done?

A. On October 18th, 1934, there was an application filed by John Andrew Jose, and on the 19th it was suspended for action that the land was withdrawn under the first formal reclamation withdrawal.

(Testimony of Paul B. Witmer)

Q. Do your records indicate that Mr. Jose was so advised at that time?

A. Well, it is customary to send out a notice. [224]

Q. You mean that is the custom of your office and has been as long as you have been with them?

A. Yes, sir.

The Court: What is the date of that notice?

The Witness: That would be October 19th, 1934.

The Court: All right.

Q. By Mr. Hedges: And the testimony that you have just given you have read from—

A. Serial Book No. 52—That would be Serial No. 052212, an application for oil and gas lease.

Q. All right.

Mr. Hedges: Although I don't believe this is necessary, your Honor, I have a certified copy of the Secretary of the Interior's order of—

The Court: It is well to have it before me. We have so much litigation, gentlemen. Just give me a paper copy whether it is certified or not.

Mr. Hedges: I have the certified copy and would like to offer it as Plaintiffs' next in order.

The Court: It will be received. It is well to have them. The pattern changes from day to day.

The Clerk: Plaintiffs' Exhibit 47 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 47, and was received in evidence.)

Mr. Hedges: I would like to offer Plaintiffs' next in [225] order a typewritten copy of the Executive Order, No. 8865, signed by Franklin D. Roosevelt on August 21st, 1941, withdrawing the lands for use for the War

(Testimony of Paul B. Witmer)

Department for combat firing ranges and maneuver purposes.

The Court: All right.

(The document referred to was marked as Plaintiffs' Exhibit 48, and was received in evidence.)

Mr. Hedges: And as Plaintiffs' next in order I would like to offer a clipping from the Federal Register—strike that, please.

I would like to offer as Plaintiffs' next in order a certified copy of Public Lands Order No. 287, which is the order re-opening these lands for entry, dated July 6th, 1945, as corrected in the Federal Register.

The Court: It may be received.

(The document referred to was marked as Plaintiffs' Exhibit 49, and was received in evidence.)

Q. By Mr. Hedges: Do your records indicate that anyone applied subsequent to October 20th, 1920—strike that.

Do your records indicate that anyone applied subsequent to October 19th, 1920, to have the Government reopen these lands for entry? A. Yes, I think there was.

Q. Can you refer to your official books there and give me the date and the name of the person? [226]

A. I don't happen to have those records here.

Q. Do you know of your own knowledge if anyone did that and if so who and at what time?

A. There was, oh, I think sometime—I don't recall just the exact time but there was a letter sent in asking that the land be classified within the last year or so, if that is close enough.

(Testimony of Paul B. Witmer)

Q. Well, can you check the records in your office and give us the date and the name of the person?

A. I can do that.

Mr. Painter: Can't we stipulate as to that, gentlemen? I have the memo which we took—

Mr. Hedges: All right.

Mr. Painter: Gentlemen, my trial brief shows that in Book 56-D of the Serial Register, Serial No. 056831, appears the notation of an application to restore the property for mining locations. It was executed by Stanley B. Houck, Hattie M. Houck, Wilna Sherard, Ruth M. Hebbard, Ruth Edling, Minnie McKenzie, Veronica Ghostley, Edward H. McKenzie—

The Court: What is the place in the Federal Register?

Mr. Painter: Book 56-D of the Serial Register.

Mr. Hedges: That is in the office of the District Land Office in Los Angeles.

Mr. Painter: That is right

The Court: That doesn't refer to the Federal Register? [227]

Mr. Hedges: No, just another application.

Mr. Painter: And the serial number 056831 in the District Office.

The Court: All right.

Mr. Hedges: I am willing to so stipulate.

The Court: Very well, gentlemen.

Mr. Painter: There is just one other matter. Maybe I am being just ultra-cautious but your Honor observed

(Testimony of Paul B. Witmer)

there was an error in the Federal Register and it was subsequently corrected.

The Court: That is right.

Mr. Painter: May we stipulate that the correction order was that it was the 63 days from the 6th of July, 1945 at 10:00 a.m. that the property was opened for that?

Mr. Hedges: I would not stipulate to the wording but I will stipulate the date the order was signed was July 6th, and it appears on the photostatic copy of Plaintiffs' Exhibit 49.

The Court: All right.

Mr. Painter: I think I used the exact words.

Mr. Hedges: You may have. You may cross examine.

Mr. Wood: Just a couple of questions.

Cross Examination

By Mr. Wood:

Q. Will you open your book here in connection with [228] Serial No. 052212? There was an application filed on the 18th day of October, 1944, which was suspended.

A. '34.

Q. '34, which was suspended by stipulation, is that correct? A. That is right.

Q. And that was for an oil and gas permit on the land? A. Yes, sir.

Q. Now, on the 25th day of October of the same year an amended application was filed and sent to the General Land Office, is that correct? A. That is correct.

(Testimony of Paul B. Witmer)

Q. And in 1936 you have a notation here as of August 27th. What was done with respect to that application?

A. Transmitted a permit issued August 22nd, 1936, —mailed a permit to the permittee.

Q. By Mr. Wood: In other words, a prospecting permit on these particular sections was issued by the Government, is that right?

A. Maybe I had better read this all right through here.

Q. Yes.

A. Then on December 15th, 1937 an application to exchange the permit for oil and gas lease filed and that was sent to the General Land Office at that time. [229]

Then there was a letter that advised the permittee is allowed an extension to December 3rd, 1938—he will be allowed to elect whether he now wants a lease and a notice was sent out on August 3rd, 1938 and service was had on August 6th. And on August 11th, the applicant filed a request to have action taken on his application for a lease and it was sent to the General Land Office by special mail.

Then on September 12th, there was an application to authorize the applicant to execute lease forms and execute a bond. No rentals requested for the first two years of the lease—required for the first two years of the lease.

Then on the 13th a notice was sent to the claimant by registered mail and on September 21st, service was had by registered mail. And on October 19th the application for extension of time to procure bond.

(Testimony of Paul B. Witmer)

January 26th, 1939, lease forms were signed and returned without bond. On February 8th they were forwarded with report to the General Land Office.

On the 23rd of May, 1940, a copy of the letter, N-51640 addressed to the permittee allowing 30 days to initial stipulations under Section 2-a.

On the 29th of August, 1940, a letter, N-82340, transmitted a lease dated January 1st, 1939, to the lessee.

On October 18th, 1940, a letter, N-101240, sent directly to lessee requiring bond or payment of rental. [230]

On 1/3/41 request for cancellation of lease filed. That went to the General Land Office. Advised lease was cancelled and closed.

Mr. Hedges: That was March 6th, 1941 you advised the lease was cancelled and the matter was closed?

The Witness: Yes, sir.

Q. By Mr. Wood: Do you have any record to show how this was withdrawn or how this land was re-opened after it was withdrawn under the first form of the Secretary's withdrawal so there could be an oil and gas lease put on these premises?

Mr. Hedges: That is objected to as being wholly incompetent, irrelevant and immaterial. We are not concerned with oil and gas leases here. We are concerned with whether or not a person could or could not file a mining claim.

The Court: I think it is asking for a legal question. That is a question of law for me to determine. A right

(Testimony of Paul B. Witmer)

could not be granted to the public domain in violation of a Presidential order.

Mr. Wood: That is correct. It might be entirely void, the Act that we have been reading from, the book here. What I want to find out is whether they have anything in the record to show their right to issue that lease.

The Court: I don't think I am interested in that. The question whether it is valid or invalid depends upon the [231] terms of the withdrawal and the Act of 1920. If that shows there was a withdrawal for all purposes only another action by the Secretary could restore them.

Mr. Wood: That is true, unless in their records somewhere there was some other action of the Secretary prior to the issuance of this lease and that is what I am trying to find out.

The Court: He has already testified there was no restoration. There would have to be a restoration of a withdrawal.

Mr. Wood: That is right.

The Court: It is all a question of law. I don't think we should subject this witness to such an inquiry at all.

Mr. Wood: Very well.

Mr. Hedges: No further questions. If your Honor please, it is ten minutes of 12 and I would like to recall Mr. Lewis for just a couple of questions and then we will rest.

The Court: Very well.

HAROLD W. LEWIS,

called as a witness by and on behalf of the plaintiffs, having been previously duly sworn, was recalled and testified further as follows: [232]

Direct Examination (Continued)

By Mr. Hedges:

Q. I show you, Mr. Lewis, Plaintiffs' Exhibits 6 through 37, inclusive, and ask you to look at the reverse side of each one of the exhibits where the printed wording, "Statement of Discovery Work Performed," and under that: "The locator has performed discovery work as required by Section 2304, Public Resources Code, as follows."

Will you just check the wording that is written in each instance? A. Do you want me to read this?

Q. No, just check it. Does the language on each of those exhibits appear to be substantially the same?

A. Yes.

Q. That is that more than ten cubic yards of material had been mined and moved and that more than \$160.00 had been spent in development work on each of the claims. Is that correct? A. Correct.

Q. And you signed each one of these and caused each one to be recorded? A. I did.

Q. On the date that it bears? A. I did.

Q. Now, was all of the work that you have set forth in each of those statements, or each of those claims—had [233] all of that work been performed prior to the time that you recorded each of the claims? A. It had.

Q. Now, you have been in the courtroom and did you hear Mr. Hodgson testify that he performed some work,

(Testimony of Harold W. Lewis)

together with some high school boys, on Torrid 1 and on Temperate 2? A. Yes.

Q. After he had completed the work on those two locations was any further work performed on them?

A. He did not complete the one up in the corner. I can't see it from here.

Q. Referring to Torrid No. 1?

A. Yes; he didn't complete that work. They worked about a day and a half or day and three-quarters on this one over here.

Q. Referring to Temperate No. 2?

A. Yes. And the payroll book shows the number—I think 10 or 11 or 12 boys worked and then we moved over to the Northwest Corner—I can't see it from here.

Q. Step right down if you wish.

The Court: You may step down.

A. We moved the crew up here and they finished out the day.

Q. Referring to Torrid 1?

A. Yes. Now, that was on a Sunday because those boys [234] were high school boys and only worked Saturdays and Sundays and then we finished up the work with an additional crew of Mexican help that we had, that we had moved from various places.

Q. In other words, what I am getting at is, there was more work performed on the location known as Torrid No. 1 and more work performed on the location known as Temperate No. 2 in addition to what Hodgson and his high school boys performed?

A. Yes, that is correct, because they could only work on Saturday and Sunday so we had to finish up on non-school days.

(Testimony of Harold W. Lewis)

Mr. Hedges: You may cross examine.

Mr. Painter: No cross examination.

Mr. Wood: I have a couple of questions.

Cross Examination

By Mr. Wood:

Q. Mr. Lewis, you paid everybody out there a standard price of \$1.00 an hour except the foremen?

A. That is right.

Mr. Wood: That is all.

The Court: Step down.

Mr. Hedges: The plaintiffs rest, your Honor. May I ask, have you decided or conferred with the court, as to the manner of putting on the defense, as to who is going to be [235] first? There are two sets of defendants here.

The Court: I don't care about that. You may arrange that among yourselves.

Mr. Painter: Well, I assumed in view of the fact that we were the last named that we would put on our defense last. The Jose group is the next group named.

The Court: All right, Mr. Wood.

Mr. Wood: We were under the assumption we were going on last and I asked the witness from Imperial Valley to be here in the morning.

The Court: Well, I can't waste a half day, gentlemen. Someone will have to go forward.

Mr. Wood: I asked yesterday when they would be through and they assured me—

The Court: You should never do that in my courtroom, Mr. Wood. Somehow or other we seem to be able to get along faster than counsel anticipates.

(Testimony of Harold W. Lewis)

Mr. Painter: There is this situation, your Honor. The reason I suggested that procedure was because I have a defense which may be applicable to both of these groups, to plaintiff and the Jose defendants. I may ask the court to permit me to put on that defense in rebuttal, as to both of those defendants, or after the Jose group finishes. That is why I assumed we would go ahead as the third group rather than the second group. In other words, I would like to put [236] on all my evidence—

The Court: I don't think it makes any difference, gentlemen, in these cases when they are tried without a jury, the order in which you put on your defense. You have cross claims and you will put in all your evidence whether it relates to one or the other.

Mr. Painter: That wasn't the point involved.

The Court: Regardless of the question of order.

Mr. Painter: That was not the question involved. The one witness whom I was going to put on for that defense may not be available at the time I finish with my evidence in regard to the locations and recordings.

The Court: I don't know how you are going to arrange it but somebody is going to have to go on at two o'clock.

Mr. Painter: I shall be prepared to go on at two o'clock, particularly in relation to my locations and so forth.

The Court: All right. We will recess at this time until two o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same day.) [237]

Los Angeles, California, Wednesday, June 4th, 1947
2:00 P. M.

The Court: You may proceed.

Mr. Painter: Call Mr. Wallace.

WILLARD W. WALLACE,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Willard W. Wallace.

Direct Examination

By Mr. Painter:

Q. Mr. Wallace, where do you reside?

A. Denver, Colorado.

Q. And you are the Willard Wallace last named as a defendant and cross-complainant in this proceeding?

A. Yes, sir.

Q. Mr. Wallace, I am going to show you a group of instruments, a group containing, I believe, 16 instruments, and ask you if you have seen them before?

A. I have.

Q. And where the first time? A. In Denver.

Q. And who prepared the typing or dictating and prepared the typing which appears on those instruments? [238] A. I had them prepared.

Q. And are you familiar with the signatures of J. C. Bergere, A. L. Bergere, James P. Delaney, Margaret J. Delaney and Irvin S. Barthel and Harris Hammond?

A. I am.

Q. And are the writings on that instrument in the handwriting of those individuals? A. It is.

(Testimony of Willard W. Wallace)

Q. Is that the handwriting of yourself, "Willard W. Wallace"? A. It is.

Q. And of your wife Edna M. Wallace?

A. It is.

Q. At the time that you prepared or had these instruments prepared, Mr. Wallace, did you prepare any other instruments? A. I did.

Q. I am showing you a weatherbeaten piece of cardboard and I will ask you if you have seen that before?

A. I have.

Q. And where? A. In Denver.

Q. Was that prepared by you or under your direction? A. It was.

Q. Were there other instruments similar in character, [239] except perhaps for some of the typed wording, prepared by you?

A. There were. There were a total of 16.

Q. After the preparation of the group of instruments which we designated as 16 instruments and the cardboard instrument which you have designated as being 16 in number, did you compare the papers, the 16 paper instruments with the 16 cardboard instruments? A. I did.

Q. And after that comparison did you find that the cardboard instruments were a true and correct copy of the paper instruments? A. I did.

Q. After the preparation of the cardboard instruments, 16 in number, were those signed by somebody?

A. They were signed by the individuals who signed the other copy.

(Testimony of Willard W. Wallace)

Q. In other words, the ones whose names you have heretofore identified? A. That is right.

Q. After the preparation of those instruments, now referring to the 32 instruments, what did you do with them?

A. I sent them to Mr. J. C. Bergere here in Los Angeles.

Mr. Painter: At this time, if your Honor please, I would [240] like to have marked for identification separately, the first 16 instruments we have referred to, the paper instruments.

The Court: They will be given letters from A to whatever the letter is.

Mr. Painter: And then following those 16 instruments I would like to have marked for identification the cardboard instrument which we referred to.

The Court: Very well.

The Clerk: The 16 instruments are marked Defendant Jose et al. Exhibit A to P, inclusive.

(The documents referred to were marked as Defendants Jose et al. Exhibits A to P, inclusive, for identification.)

The Clerk: The cardboard instrument referred to is marked Defendant Jose Exhibit Q for identification.

(The document referred to was marked as Defendant Jose Exhibit Q, for identification.)

(Testimony of Willard W. Wallace)

Q. By Mr. Painter: I am going to show you the instrument which bears the notation "Defendants Exhibit Q for identification," and ask you where you next saw this instrument after having prepared it and sent it to Mr. Bergere?

A. It was posted on a stake on one of the properties in the Imperial Valley.

Q. And when did you see that?

A. I think on one or two other occasions but definitely sometime during December, last December. [241]

Q. And did you take that from the post at that time and give it to someone? A. I did.

Q. And to whom did you give it?

A. To Mr. Howard Painter.

Mr. Painter: I am asking at this time, if your Honor please, that Exhibit Q for identification be introduced in evidence.

Mr. Hedges: To which we object on the ground there has been no showing that it was posted on the premises. The only testimony is that the witness saw it before it left his possession and then at some later date saw it on a post. There is no testimony it was signed or that the signatures appeared thereon.

Mr. Painter: It isn't for the purpose of showing posting, your Honor. I offer it in evidence just as a chain in the instruments—laying a foundation for ultimately introducing in evidence copies of that.

(Testimony of Willard W. Wallace)

Mr. Hedges: I might add further to the objection we don't know upon which location on the property or even whether it was on this property that it was posted. He said he found it on a stake in Imperial Valley.

The Court: It is an instrument which is not signed. There is no evidence of any signature attached to it.

Mr. Painter: Your Honor, I think by a very close [242] examination you will find that it is a weatherbeaten instrument from which the signatures have probably been eliminated.

The Court: No, no, I cannot say that because there is no showing. If you examine the places for signatures there is no evidence of any signature being erased by the weather. I think sufficient foundation has not been laid.

Mr. Painter: All right, sir.

The Court: If you look through a magnifying glass you will see no signatures were attached. Even the type-writing was not entirely deleted. Proceed.

Mr. Painter: Your Honor, I will withdraw the offer at this time.

The Court: It may remain Exhibit Q for identification.

Mr. Painter: And proceed with my examination. That is all, Mr. Wallace.

Mr. Hedges: No questions.

Mr. Wood: No questions.

Mr. Painter: Mr. Bergere.

J. C. BERGERE,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: J. C. Bergere. [243]

Direct Examination

By Mr. Painter:

Q. Mr. Bergere, where do you reside?

A. 220 South Weatherly Drive.

Q. Are you one of the Bergeres, the J. C. Bergere named as one of the defendants in this action and the cross-complainant? A. Yes.

Q. I am showing you a group of instruments which have been marked Defendants' Exhibits A to P, inclusive. I will ask you to examine both the front and the back of each one of those instruments and state whether or not you have seen those instruments before? A. I have.

Q. When was it that you saw them the first time?

A. It was—I don't know—it was in 1945, in July.

Q. And from whom did you get those instruments?

A. From Mr. Wallace in Denver, Colorado.

Q. And did you receive them through the mail?

A. Yes, sir.

Q. At the same time you received those instruments which you have just been examining, Defendants' Exhibits A to P, inclusive, did you in the same envelope received any other instruments? A. I did. [244]

Q. And describe what those instruments looked like.

A. They were cardboard about 8 by 8.

Q. And I am showing you Defendants' Exhibit Q for identification and ask you if that instrument fairly

(Testimony of J. C. Bergere)

represents the type of the other instruments you received from Mr. Wallace through the mail? A. It does.

Q. Now, at the time that you received the instruments designated Defendants' Exhibits A to P for identification, was the front—that is, the front part of this instrument in the form that it is today? A. It was.

Mr. Hedges: Referring to Exhibit Q?

Mr. Painter: No, Exhibits A to P, inclusive.

Q. By Mr. Painter: And did it contain the signatures which now appear at the bottom of that page?

A. All but two.

Q. Now, what two instruments—what two signatures did it not contain? A. All but three.

Q. What three signatures did it not contain?

A. It did not contain Mr. Hammond's, A. L. Bergere, or mine.

Q. Are you familiar with the handwriting of Harris Hammond? [245] A. I am.

Q. And will you examine those instruments and state whether or not the signature "Harris Hammond" is in the handwriting of Harris Hammond, one of the parties to this action? A. Yes, they are.

Q. And after receipt of that instrument did you affix—or those instruments, A to P, inclusive, did you affix your signature to each one of those instruments?

A. I did.

Q. And was the signature of A. L. Bergere fixed to that instrument? A. It was.

Q. And are you familiar with the signature of A. L. Bergere? A. I am.

Q. And does his signature appear in his handwriting in each one of those instruments? A. It does.

(Testimony of J. C. Bergere)

Q. After the receipt of those instruments and the 16 instruments which I believe you have described as the cardboard instruments, did you compare the printing and typing which appeared on the face of the cardboard instruments, the 16, with the typing and the printing which appeared on the face of the instruments A to P, inclusive? [246] A. I did.

Q. And after an examination of those 32 instruments did you or did you not find that there was an instrument known as a cardboard instrument which was an exact copy of one of these instruments, A to P, inclusive?

A. Yes, they were.

Q. There was? A. Yes.

Q. Now, when you received the cardboard instruments, the 16, how many—strike that. When you received the cardboard instruments, the 16, were there any signatures on those instruments? A. There were.

Q. And how many signatures? A. Five.

Q. And will you give us the signatures which appeared on each one of those 16 cardboard instruments when you first received them?

A. Willard W. Wallace, Edna M. Wallace, James P. Delaney, Mary Jane Delaney, and Irvin S. Barthel.

Q. And after receipt of those 16 cardboard instruments did you have affixed thereto, or did you see affixed thereto, the signature of Harris Hammond?

A. I did.

Q. And was that signature of Harris Hammond on each [247] one of the 16 cardboard instruments?

A. It was.

Q. And what other signatures did you see affixed after receipt of the 16 cardboard instruments?

A. A. L. Bergere's signature and my own.

(Testimony of J. C. Bergere)

Q. That is J. C. Bergere? A. J. C. Bergere.

Q. Now, after receipt of the cardboard instruments, the 16, and after the affixing of the three other signatures on the 16 cardboard instruments, what, if anything, did you do with those 16 cardboard instruments?

A. I had these cardboard instruments tacked on pieces of board which had a stake and put them in my car to take to Imperial Valley.

Q. By that do you mean that you had a stake on which was attached a piece of board on which you attached a copy of one of the cardboard instruments?

A. That is right.

Q. And how many of those stakes did you prepare with boards attached to them?

A. I had prepared 16.

Q. And did you personally attach on each one of those boards one of the instruments we have been designating as the 16 cardboard instruments? A. I did. [248]

Q. And when you had completed doing that was there one on each of the separate 16 stakes?

A. There was.

Q. What did you do with those 16 stakes, with the 16 cardboard instruments tacked onto them after you had prepared them in that manner?

A. Put them in the back of my car and took them to Brawley.

Q. And then what did you do with them?

A. I gave them to Mr. Norris.

Q. And Mr. Norris is whom?

A. Mr. Norris is a surveyor.

Q. Give us his given name.

A. Mr. Byron Norris.

(Testimony of J. C. Bergere)

Q. Mr. Byron Norris? A. Yes.

Q. And do you remember the day of the month, the day and the month and the year it was that you turned those over to Mr. Norris' care? A. It was July 6th.

Q. July 6th? A. I mean September 6th.

Q. Now, you heretofore testified again to having received those about July 6th. Was that in error?

A. That was an error. It was— [249]

Q. It was about September 6th?

A. September 6th.

Q. And was it on the 6th of September or sometime in that neighborhood, that you received them from Mr. Wallace? A. It was the first part of September.

Q. Then you put them in the back of Mr. Norris' car on the 6th of September. Where was Mr. Norris at that time? A. At Brawley.

Q. Now, the exhibits for identification, Defendants' A to P inclusive, what did you do with those?

A. I took them to the County Recorder of Imperial Valley.

Q. And what did you do with them at that time?

A. I gave them to the County Recorder and asked to have them recorded.

Q. And on what date did you do that?

A. That was on September 7th.

Mr. Painter: That is all.

Cross Examination

By Mr. Hedges:

Q. Mr. Bergere, you testified you received from Mr. Wallace in Colorado, Defendants' Exhibits A to P, bearing five of the eight signatures that are on those documents? A. That is right.

(Testimony of J. C. Bergere)

Q. And that you in turn executed each of the documents [250] yourself and in turn either witnessed or are familiar with the signatures of Mr. Hammond and Mr. A. L. Bergere? A. Yes, sir.

Q. Is he your brother, incidentally?

A. My brother, yes.

Q. And at the same time you received 16 other documents, being heretofore referred to as the cardboard documents. Was there one document for each on the four sections involved?

A. Well, each one of these cardboard documents matched one of these.

Q. In other words, there was one for each claim, 16 claims in all? A. That is correct.

Q. And each one of those cardboard documents was signed likewise with five signatures?

A. That is right.

Q. And you in turn executed the instrument and your brother and Mr. Hammond executed them?

A. That is right.

Q. There were no more than the 16 cardboards and no more than the 16 claims, is that correct?

A. 16 was all there were.

Q. You are positive you did not have any extra copies?

A. I didn't have any extra copies, no. [251]

Q. In other words, you are certain in your statement that there were just 32 documents in all that you received?

A. As I remember that is all there were.

Q. The only thing that you did with the instruments that you received from Mr. Wallace was to execute them yourself, see that the other two gentlemen executed them, tacked the cardboard, the 16 cardboard notices on a piece

(Testimony of J. C. Bergere)

of board which in turn was nailed to a stake; delivered those to Mr. Norris at Brawley and recorded the 16 claims, the defendants' Exhibits A to P, is that correct?

A. That is correct.

Q. You had nothing whatever to do with the transaction other than that? A. That is right.

Q. I didn't quite understand your testimony as to when you received these instruments. Was it the first part of September or the 6th of September?

A. The first part of September.

Q. In other words, you had them in your possession several days before you took them down to Mr. Norris?

A. That is right.

Q. Did you give any instructions to Mr. Norris when you handed him these 16 cardboards tacked to the stake?

A. Yes. Mr. Norris and I went over the whole thing as to what he was to do with these stakes and I left him in [252] Brawley while I went to El Centro.

Q. But you didn't go out with Mr. Norris to the property at the time he staked the claims, if he did?

A. Not at the time he staked the claims, no.

Q. Now, you handed them to him on the 6th of September. You didn't file those instruments until the 7th, did you? A. That is right.

Q. You took them to the Recorder's office at 10:00 a.m. on the 7th, is that correct? A. That is correct.

Mr. Hedges: No further questions.

Mr. Wood: No questions.

The Court: Call your next witness.

Mr. Painter: Mr. Byron Norris.

BYRON NORRIS,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Byron B. Norris.

Direct Examination

By Mr. Painter:

Q. Mr. Norris, what is your profession?

A. I am a consulting engineer.

Q. And where do you reside? [253]

A. 808 Kendall Avenue, South Pasadena, California.

Q. Did you on the 6th of September 1945 received from Mr. J. C. Bergere any instruments tacked onto stakes? A. I did.

Q. And where were you when you received those?

A. In Brawley.

Q. And after the instruments were received where were they placed?

A. These cardboards were on boards with a stake and I took them and put them in my car on the 6th of September.

Q. And how many boards were there on stakes?

A. 16.

Q. The cardboard instrument similar to Defendants' Exhibit Q for identification, tacked onto each one of those boards? A. Yes.

Q. And did you examine each and every one of the instruments which was attached onto a stake at any time between the date, the 6th of September, and prior to ten o'clock the morning of the 7th of September, 1945?

(Testimony of Byron Norris)

A. Yes, at the time the stakes and this notice was transferred to my car we checked each one for the name and location.

Q. And did you have in your possession at that time a diagram or plat of the porperty involved in this matter? [254] A. Yes.

Q. And do you still have that in your possession?

A. Yes.

Q. Now, referring to Defendants' Exhibit Q for identification, will you state whether or not on each one of the cardboard instruments tacked on each one of these boards, there appeared the printing which appears on Defendants' Exhibit Q for identification?

A. Yes, to the best of my recollection it was the same here except it designated the area and the name of the claim.

Q. I am asking you now just about the printing—that is, not the typing but the printing. Was the printing the same on each one of those 16 cardboards as appears on this Defendants' Exhibit Q for identification?

A. Yes.

Q. Now, from the diagram or plat which you have before you can you give us the description and the name of the claims that appeared on each one of those 16 cardboard signs which were tacked onto the boards?

A. Yes.

Q. Now, will you start in—strike that.

Mr. Painter: At this time, if the court please, I am going to ask that the instrument that the witness is looking at be marked as Defendants' Exhibit R for identification. [255]

The Court: It may be so marked.

(Testimony of Byron Norris)

(The document referred to was marked as Defendants' Exhibit R, for identification.)

Q. By Mr. Painter: Will you start in at the Northeast Section of the property, the Northeast Quarter section of the property and follow a continuity by giving us the names of each individual claim, such as we have had heretofore, give us all the claims by that name before you go to another set of claims. Now, when you give us the name of the claim will you also give us the description which was contained on this cardboard at the time you saw it posted on the stakes.

A. Claim number, Plat No. 1 is the Northeast Quarter of Section 21.

Plat No. 2 is the Northwest Quarter of Section 21.

Plat No. 3 is the Southeast Quarter of Section 21.

Plat No. 4 is the Southwest Quarter of Section 21.

Gunnison No. 1 is the Northeast Quarter of Section 20.

Gunnison No. 2 is the Northwest Quarter of Section 20.

Gunnison No. 3 is the Southeast Quarter of Section 20.

Gunnison No. 4 is the Southwest Quarter of Section 20. [256]

Silver Heels No. 1 is the Northeast Quarter of Section 28.

Silver Heels No. 2 is the Northwest Quarter of Section 28.

Silver Heels No. 3 is the Southeast Quarter of Section 28.

Silver Heels No. 4 is the Southeast Quarter of Section 28.

Horse Shoe No. 1, the Northeast Quarter of Section 29.

(Testimony of Byron Norris)

Horse Shoe No. 2, the Northwest Quarter of Section 29.

Horse Shoe No. 3, the Southeast Quarter of Section 29.

Horse Shoe No. 4, the Southwest Quarter of Section 29, all in Township 14 South, Range 12 East, San Bernardino Meridian.

Q. Now, was there on one of these claims typed in the—or, rather, we will call them notices of location from now on—one of these notices of location was there typed into the instrument the word “Unorganized,” the word “Imperial,” the word “California,” and the words and number “Plat No. 1”?

A. Yes, to the best of my recollection it was.

Q. Now, in that same instrument was there the description typed in, “The Northeast Quarter of Section 21, Township 14, South, Range 12 East, S.B.B. & M., consisting of 160 acres”? [257]

A. Yes, I believe there was.

Q. Now, as you went through each one of these notices which were staked on the claim, did you find that there was a claim designated as Plat No. 2, Plat No. 3, Plat No. 4; Gunnison No. 1, Gunnison No. 2, Gunnison No. 3, and Gunnison No. 4? Horse Shoe No. 1, Horse Shoe No. 2, Horse Shoe No. 3, Horse Shoe No. 4, and Silver Heels, No. 1. Silver Heels No. 2, Silver Heels No. 3, and Silver Heels No. 4, typed on to the cardboard which was attached to the stake? A. Yes.

Q. And did you find in each instance that the quarter section involved in that particular claim was described?

A. Yes.

(Testimony of Byron Norris)

Q. And did it coincide with the claim name which you had placed on Defendants' Exhibit R for identification?

A. Yes, it did.

Q. By the way, did this Defendants' Exhibit R for identification—was that all prepared by you?

A. Yes.

Q. And was it prepared to be used in connection with certain matters involved in this matter? A. Yes.

Q. Now, on the instruments, the same 16 cardboard instruments, did you find a date typed in after the words "Discovered and located"? [258] A. Yes.

Q. And what was that date in each one of the instruments? A. September 7th, 1945.

Q. And did you find after examining all of the 16 instruments that the 16 instruments described 16 quarter sections of this property? A. Yes.

Q. And in each of the 16 instruments was the section and the township and the range properly set forth?

A. I believe it was, yes. We checked that and I think it was.

Q. Now, on these 16 instruments when you received them, the cardboard instruments, did you see any names on the bottom of the instruments under the words and figures "Discovered and located September 7th, 1945"?

A. Yes; to the best of my recollection there was, I think, eight signatures on there.

Q. Whose signatures they were you do not know?

A. I don't know.

(Testimony of Byron Norris)

Q. Did you know any of the signatures that were on there? Did you recognize any of the signatures?

A. I wouldn't say that I would, no. I think I would recognize Mr. Wallace's signature but other than that I don't believe I would. [259]

Q. Now, after receiving those instruments tacked onto those stakes, did you keep those in your possession from that time on until ten o'clock the morning of September 7th? A. I did.

Q. I am going to show you Defendants' Exhibits A to P, inclusive, and ask you if you have ever seen those 16 instruments before? A. No, I never have.

Q. You never have? A. No.

Q. After receiving the 16 cardboard instruments which were attached to the stakes, did you go out on the property involved in this action?

A. As of September 6th, you mean?

Q. No, at any time after receiving them from Mr. Bergere?

A. Yes, yes, on September 6th after receiving these we went out and looked the property over with the idea of locating the section corners and quarter corners.

Q. And who was with you at that time?

A. Mr. Thompson and Mr. Bergere.

Q. And describe for us just what you did after you got to the property on the 6th?

A. Well, in going out to the property I had checked it on a map and we measured off six and one-tenth miles to [260] where the corner of the Southeast corner of Section 21 would be, and we found a metallic marker there at that point.

(Testimony of Byron Norris)

Q. Now, will you step down and show us the metal marker which you found at that point, marking it with your pencil on Plaintiffs' Exhibit 1? A. Yes, sir.

Q. Now, will you place thereafter—do you have a green pencil with you? A. Yes.

Q. Will you mark at that point the letter "A." Now, that letter "A" designates the monument or Governmental monument you discovered at that time?

A. Yes, sir; it is the common corner here for 21 and 28, Sections 21 and 28.

Q. Sections 21 and 28, is that right?

A. That is right.

Mr. Hedges: Mr. Painter, pardon me for interrupting. I wonder if I might ask you to identify approximately the time he went out there on the 6th?

Q. By Mr. Painter: Tell us about the time you went out there on the 6th?

A. Well, to the best of my recollection it would be around one o'clock, I believe, that we arrived out there. Somewhere near that.

Q. And now describe for what you did after having [261] found the Government monument at the point "A"?

A. Well, we continued on here in a westerly direction and located the quarter corner here, the common quarter corner for Sections 21 and 28. At this point I proposed a stake and then we proceeded and located the corner, the common corner in the middle of the property and then proceeded to the common quarter corner for Sections 20 and 29 at this point. These two points were the points in particular I wished to locate.

(Testimony of Byron Norris)

Q. Now, will you mark with the letter "B" the second quarter corner or monument, the second one that you found, and then with the letter "C" the third monument you found. A. This one?

Q. Yes, the one in the center of the property. And with the letter "D" the fourth monument you found.

A. Yes.

Q. Now, what further did you do on that day?

A. Well, I think that is all we attempted to do that day—all that we attempted to locate that day was these monuments along this road.

Q. All right, you may take the stand again.

Did you return to the property on the morning of the 7th of September, 1945? A. Yes.

Q. About what time of the day did you arrive? [262]

A. About nine o'clock in the morning.

Q. And after arriving at the property did you drive onto it? A. Yes.

Q. And did you go to some point within the boundaries of the property on that morning? A. I did.

Q. And what point did you go to?

A. The point marked "B" on this, or the South quarter corner of Section 21.

Q. Now, did you remain at that point "B" for any period of time? A. Yes.

Q. How long?

A. Well, until ten o'clock when we started staking.

Q. Now, commencing with ten o'clock will you tell us where you first did any staking, as you call it?

A. The first staking we did was on Platte No. 3.

Q. Now, will you describe that by legal description?

A. That is the Southeast Quarter of Section 21.

(Testimony of Byron Norris)

Q. Now, before you describe for us what you did out there in staking, will you give us the procedure you followed from the time that you got out of the car and removed your stakes with the claims on them until you got onto the property and what you did after you got onto this partic-[263] ular property?

A. Well, we drove down to this monument that we had located the day before, and waited there, prepared to be ready to stake it at exactly ten o'clock. We took our stakes out and checked the names and numbers and was prepared to go ahead at ten o'clock.

Q. Now, at ten o'clock did you take one of the stakes and go over to the property which you have described as Platte No. 1?

A. No. I think you should refer to Platte 3.

Q. Platte 3, I should say. A. Yes.

Q. Before going to Platte 3 did you examine the cardboard sign that was on that stake to determine whether or not that was the Platte 3 notice of location?

A. Yes, sir.

Q. And did you find it to be the proper notice of location? A. Yes.

Q. And did you find thereon the legal description of that particular quarter section? A. Yes.

Q. And did you find thereon the eight names which you have heretofore testified to? A. Yes. [264]

Q. And what did you do after you had done that?

A. After we staked Platte 3?

Q. You went over and did something with the stake, didn't you?

A. Yes. We put the stake down at exactly ten o'clock.

(Testimony of Byron Norris)

Q. Exactly ten o'clock? A. Yes.

Q. Did you make any field notes while you were doing this? A. Yes.

Q. And do you have those field notes with you?

A. Yes, I do.

Q. Will you get them so you can have them while you are working with this matter? A. Yes.

Q. Now, to what quarter section did you next go?

A. To Silver Heels No. 1, the Northeast Quarter of Section 28.

Q. Now, did you take a notice of location with you to that location? A. Yes.

Q. To that quarter section? A. Yes.

Q. Before staking or driving the stake in the ground [265] did you examine the notice of location which was posted on that board? A. Yes.

Q. And did you find that it described the property which you are designating as Silver Heels No. 1?

A. Yes, sir.

Q. And did that likewise contain the eight signatures which you have heretofore mentioned? A. Yes.

Q. And did it likewise contain this other printing and typewriting which you have heretofore testified to?

A. Yes.

Q. In other words, as you examined each and every one of these claims, notices of location, Mr. Norris, preparatory to posting the notice of location, did you find any change in the appearance of those notices of location in any manner than what it had been on the day before when you examined it? In other words, were they the same as when you examined them the day before—posted on the board? A. You mean a change in this?

(Testimony of Byron Norris)

Q. Had there been any change made in them as they appeared the day before? A. No, no, I believe not.

Q. Now, would you tell me to what quarter section you next went after finishing the Silver Heels No. 1? [266]

A. Went to Platte No. 4, which is the Southwest Quarter of Section 21.

Q. And what did you do when you got there?

A. We posted our notice.

Q. You drove it in the ground, the stake?

A. Yes, sir.

Q. By the way, how far above the ground did these stakes protrude after you had driven them in?

A. I would say an average of about four feet. They were about five feet long or possibly a little more.

Q. By the way, counsel has brought to my attention that I didn't ask you the time at which you posted the notice on Silver Heels No. 1. Can you give that to us?

A. Yes; 10:02 a.m.

Q. And now before you posted the notice of location on Platte 4, did you examine the notice to see whether or not it contained the description of the quarter section designated as Platte 4? A. I did.

Q. And did it? A. Yes.

Q. Now, what time of the day did you drive that stake in the ground? A. At 10:05 a.m.

Q. And then where did you go? [267]

A. I crossed the road to Silver Heels No. 2, which is the Northwest one-quarter corner of Section 28.

Q. And what did you do after you got over there?

A. We posted our notice there at 10:10 a.m.

(Testimony of Byron Norris)

Q. In each instance where you say you posted your notice do you mean by that, Mr. Norris, that you drove the stake in the ground? A. Yes.

Q. And that on the stake was one of these cardboard notices? A. Yes.

Mr. Hedges: Mr. Painter, I didn't get the name of the last claim. Was that Silver Heels No. 2?

Mr. Painter: Silver Heels No. 2.

Q. By Mr. Painter: And at what time of the day did you drive that stake in the ground?

A. Silver Heels No. 2 at 10:10 a.m.

Q. I don't know whether I asked this question but for fear I didn't, the description which you found on the Silver Heels No. 2 notice of location was the description of that particular quarter section, was it not? A. Yes.

Q. Now, after you had posted your notice on Silver Heels No. 2 what did you do?

A. We took a picture of it as best we could, of the [268] posting at that corner.

Q. And then what did you do?

A. We drove west one mile to the common quarter corner between Sections 20 and 29.

Q. And that is the point which you marked on Plaintiffs' Exhibit 1 as "D," is that correct? A. Yes.

Q. Now, when you got over there what did you do and what did Mr. Thompson do?

A. We proceeded to stake that corner as fast as we could.

Q. Well, will you tell us whether or not you took out of your car any additional stakes with cardboard signs on them? A. Yes.

(Testimony of Byron Norris)

Q. How many?

A. Took out the four stakes, Gunnison Nos. 3 and 4, and Horse Shoe Nos. 1 and 2.

Q. Now, to which quarter section did you first go?

A. First went to Horse Shoe No. 1, which is the Northeast Quarter of Section 29.

Q. And before driving that stake into the ground did you examine the notice of location which was on the stake? A. Yes.

Q. To determine whether or not that particular quarter [269] section was properly described in that notice of location? A. Yes.

Q. And was it? A. Yes.

Q. At what time of the day did you drive the stake at that location? A. At 10:22 a.m.

Q. Now, after having driven that stake into the ground where did you go?

A. Crossed the road to Gunnison No. 3, which is the Southeast Quarter of Section 20.

Q. And what did you do over there?

A. We posted the notice at 10:24.

Q. 10:24 a.m.? A. Yes.

Q. And prior to the time you posted the notice did you examine the notice of location to see whether the description which was contained on that notice of location was the description for that particular quarter section involved? A. Yes.

Q. And was it? A. Yes.

Q. Next, where did you go?

A. To Gunnison No. 4, which is the Southeast Quarter [270] Section of Section 20.

(Testimony of Byron Norris)

Q. And what did you do when you got there?

A. We posted that at 10:26 a.m.

Q. And before driving the post into the ground did you examine the notice to whether or not the notice which was on that sign or on that stake was properly described—properly described the quarter section involved? A. Yes.

Q. And did it? A. Yes.

Q. Then where did you go?

A. South across the road to Horse Shoe No. 2, which is the Northwest one-quarter of Section 29.

Q. And what did you do when you got over there?

A. We staked that at 10:30 a.m.

Q. Prior to the time you staked that did you examine the notice of location which was on the board to determine whether the description correctly described the quarter section therein involved? A. Yes, I did.

Q. Did it? A. It did.

Q. Did you give me the time at which that posting was made? A. At 10:30 a.m. [271]

Q. Now, on each one of the notices of location did you find the same eight names which had appeared on those notices of location the day before—that is, these first eight that you have referred to?

A. Well, that was the same thing I had the day before.

Q. The same thing you had the day before?

A. Yes.

Q. And you had completed your work on Horse Shoe 2. Then where did you go?

A. Well, immediately we completed these four we took a picture of that also to show the work done there.

(Testimony of Byron Norris)

Q. The work done? A. Yes.

Q. And then where did you go?

A. I took the stakes for Gunnison No. 1 and No. 2 and walked north to post them.

Q. And where did Mr. Thompson go?

A. Mr. Thompson accompanied me that day and assisted me in posting all the first eight postings that we have just mentioned. He stayed at the car while I went to post the Gunnison No. 1 and No. 2.

Q. All right. Now, when you got up to the Northeast Quarter of Section 20 what did you do?

A. I posted a notice there on Gunnison No. 1 at 11:10 a.m. [272]

Q. And did you examine the notice to determine whether or not it contained a description of the quarter section involved? A. Yes.

Q. And did it contain the description of that quarter section? A. It did.

Q. You drove the stake into the ground the same way as in the preceding eight claims, is that correct?

A. Yes, sir.

Mr. Wood: May I have the time?

Mr. Hedges: 11:10 a.m.

Q. By Mr. Painter: Then where did you go?

A. Over to the Gunnison No. 2 claim, which is the Northeast Quarter of Section 20 and I posted that at 11:20 a.m.

Q. Prior to the time that you put that stake in on the Northwest Quarter of Section 20 did you examine the board and the sign on it to determine whether the description contained in that notice of location was the description of that quarter section involved? A. I did.

(Testimony of Byron Norris)

Q. And was it? A. It was.

Q. And again I may be repetitious, Mr. Norris, but [273] were the two notices of location which you posted on Gunnison 1 and Gunnison 2 the same two notices which you had examined the day before? A. Yes.

Q. Referring to those claims? A. Yes.

Q. Then what did you do?

A. I came back to the car and Mr. Thompson posted the southerly four claims, Silver Heels 3 and 4, and Horse Shoe 3 and 4.

Q. Then what did you do while he was doing that?

A. I stayed there at the car.

Q. And did you remain there at the car until he returned? A. Yes.

Q. And then where did you and Mr. Thompson go?

A. We drove east to the common quarter corner between Sections 21 and 28.

Q. At the point which you have marked on Plaintiffs' Exhibit 1 as Point "B"? A. Yes.

Q. And what did you do when you arrived at that point?

A. Then I took the stakes for Platte No. 1 and Platte No. 2 and walked north to post them.

Q. And when you got to the Northeast Quarter of [274] Section 21 what did you do?

A. That is Platte No. 1, the Northeast Quarter of Section 21, and I posted that at 2:45 p.m.

Q. And did you examine the notice on that occasion to determine whether or not it described the quarter section there involved? A. Yes.

Q. And did it? A. It did.

(Testimony of Byron Norris)

Q. And then where did you go?

A. To Platte No. 2, which is the Northwest Quarter of Section 21. I posted that at 2:50 p.m.

Q. And did you examine the notice of location prior to the time you posted it to determine whether or not the notice of location contained the description of that quarter section involved? A. I did.

Q. And were these two notices the same two notices which you had examined on the stakes the day before?

A. Yes. Those stakes, I might add, were in my possession all the time from the time—

Q. From the time he turned them over to you, is that right? A. Yes.

Q. After you had posted the notice of location on [275] Platte No. 2 where did you go?

A. We went back to Brawley. That finished our postings.

Mr. Painter: That is all with Mr. Norris.

Cross-Examination

By Mr. Hedges:

Q. Mr. Norris, you testified that on September 6th when these 16 claims and 16 notices were handed to you, that Mr. Bergere and Mr. Thompson—incidentally, what is this Mr. Thompson's first name?

A. I believe it is Herbert C. Thompson.

Q. You testified, I believe, that the three of you went out to the property. Is that correct?

A. That is right, yes.

Q. All you did on that occasion was to locate the quarter sections along the highway?

A. That is right.

(Testimony of Byron Norris)

Q. You didn't bother with any general land office survey stakes on any other portion of the property?

A. No.

Q. How long were you out on the property on the 6th?

A. Oh, I would say two or three hours. Something like that. I didn't keep any record of it.

Q. Did you keep any field notes that day as to what you did? [276]

A. No. We simply went out to locate those monuments.

Q. You said that on September 7th you went onto the property at about eight o'clock in the morning?

A. No. I think I arrived there about eight o'clock in the morning.

Q. How did you get out to the property?

A. I drove out in my car.

Q. What kind of car is it? A. Plymouth.

Q. Plymouth? A. Yes.

Q. What color is it?

A. I believe they call it aqua-marine blue but I call it green.

Q. And when you arrived on the property just where did you park your car?

A. At the south quarter corner of Section 21, at the point marked "B" on that exhibit.

Q. At the end of the first quarter section, is that right? A. Yes, that is right.

Q. Did you see anyone else on the property at that time?

A. At the time we arrived I did not see anyone else, no. [277]

(Testimony of Byron Norris)

Q. Did you stay in one position from nine o'clock until ten o'clock? A. Yes.

Q. Or did you move the car from place to place?

A. No. We stayed right there.

Q. Just stayed right there? A. Yes.

Q. You didn't see anyone go up and down the highway or any other cars on the highway, is that correct?

A. Well, there were cars came later, yes.

Q. I mean, when you got there?

A. Not at the time I arrived, no. I could see no cars.

Q. And you can see some distance on that road, can you not?

A. You can to the east but to the west there is a hill there. You couldn't see very far.

Q. Which way was your car parked? Toward the west? A. Yes.

Q. Did you see anyone else out on the property when you were out there on the 6th? A. Yes.

Q. Were they there before you got there or did they arrive afterwards?

A. No. They were out there when we arrived. [278]

Q. Could you identify anyone that was there?

A. I don't believe I could.

Q. Do you know Mr. Lewis when you see him?

A. I didn't know him at that time. In fact, I didn't know him until yesterday.

Q. Did you see him out there on the 6th?

A. I don't recall that I did.

Q. You wouldn't remember one way or the other?

A. No. I don't think I would. I paid no particular attention.

(Testimony of Byron Norris)

Q. Did you notice him out there on the 7th?

A. There was quite a group of men there. Whether or not he was among them I wouldn't be certain.

Q. But they were not on the property, according to your testimony, when you arrived, is that right?

A. On September 7th at nine o'clock I didn't see any of them. There were two cars drove up a little bit later.

Q. Could you identify those cars?

A. Yes. One of them was an Army car, a command car, I believe they call it, sort of an exalted jeep. And the other was a grey sedan. I don't know what make.

Q. Do you recall what time it was when you first saw them?

A. To the best of my recollection it was between 9:30 and ten when they drove up. They were not together if I [279] recall right. First one drove up and then the other.

Q. Mr. Bergere was not with you on the 7th, was he?

A. No.

Q. Just Mr. Thompson and yourself? A. Yes.

Q. Mr. Norris, will you take the green pencil that you used a few moments ago and step down to the map and show me on the map by indicating with figures 1 in order, where you posted the first claim which you said was Platte No. 3, the Southwest Quarter of Section 21?

A. Well, it would be approximately at this point here. I will make a "T" there for a posting.

Q. Put the figure 1 with it so we can follow one right after the other, will you, please? A. All right.

Q. You said that was at ten o'clock? A. Yes.

Q. Incidentally, how do you know it was ten o'clock?

A. Well, because I timed it.

(Testimony of Byron Norris)

Q. Did you make a record of the time at that time?

A. Yes; and checked it.

Q. Do you have that record with you? A. Yes.

Q. Is that the little slip of paper that I saw a moment ago? [280] A. That is right.

Q. This instrument I am now showing you in your own handwriting? A. Yes.

Q. What date was it made out?

A. September 7th, 1945.

Q. And was it made as you progressed?

A. Yes.

Q. All right. Will you show us the next point that you went to which I believe you said was Silver Heels No. 1, and show me the route that you took?

A. Well, we crossed the road to the south and posted at approximately this point here.

Q. Indicating the figure 2 on the map. And then you said you went next to Platte No. 4, which is in the Southwest Quarter of Section 21? A. Yes.

Q. You walked to those three points, I assume, that you have indicated so far?

A. Yes; I would say we ran.

Q. You have indicated this last point on the map as "T-3"? A. Yes.

Q. Now, when you say "we did" both you and Mr. Thompson ran? [281] A. Yes, sir.

Q. Both of you?

A. Yes; we were working together.

Q. All right. You were both staking the same locations? A. Yes.

(Testimony of Byron Norris)

Q. How did you both do that? Did one hold the stake and the other hold the hammer? What are the physical facts?

A. Yes; one would hold the stake and the other drive it in.

Q. How far did you drive these in?

A. Oh, I would say about a foot—maybe a little more.

Q. All right. Then where did you go next?

A. Crossed the road here.

Q. Indicating T-4 on the map? A. Yes.

Q. Your first posting on the Northeast Quarter of 28 was 10:00 o'clock or 10:02?

A. Northeast Quarter of 28? That was ten.

Q. I beg your pardon, I meant the Southwest Quarter of 21. A. Yes, that was at ten o'clock.

Q. In other words, in ten minutes you posted four claims? A. Yes. [282]

Q. All right. Then you say you took a picture of the four postings, or what did you do?

A. As near as I could, yes.

Q. You mean you took four pictures?

A. No, I took one picture from approximately this position here.

Q. Do you have that picture?

A. I believe counsel has it.

Q. Very well.

Mr. Painter: Would you like it, Mr. Hedges?

Mr. Hedges: Yes.

Mr. Painter: It is marked on the back.

Mr. Hedges: It isn't marked on the back.

(Testimony of Byron Norris)

Q. By Mr. Painter: Is it one of those?

A. Yes; it is that picture there. I think I took two exposures. This is the same picture only I believe a different exposure.

Mr. Hedges: May I have this marked for identification?

Mr. Painter: That is all right.

Mr. Hedges: I would like to have these two photographs marked for identification as one exhibit.

The Court: Very well.

The Clerk: Plaintiffs' Exhibit 50 for identification.

(The documents referred to were marked Plaintiffs' Exhibit 50, for identification.) [283]

Q. By Mr. Hedges: I hand you Plaintiffs' Exhibit 50 for identification and ask you to point out to me there where the four locations are which you have indicated?

A. There is one posting. Here is another. There is another right there.

Q. I can see three. I wondered where the fourth one was.

A. I believe it is right in there. I believe that is right there but I wouldn't be positive.

Q. The second one you are referring to. There only appears to be two visible that I see.

A. On this side.

Q. One here and one there? A. Yes.

Q. Now, after you took a picture of that quarter corner where did you go next?

A. We drove west to this south quarter corner of Section 20, marked "D" on this exhibit.

(Testimony of Byron Norris)

Q. All right. And you posted what you said was Horse Shoe No. 1, the Northwest Quarter of Section 29. Will you indicate where you posted that, please?

A. Right here.

Q. All right. And where did you make the next posting that is indicated as No. 5—that is No. 5, Mr. Reporter—"T-5." [284]

A. On Gunnison No. 3, which is the Southeast Quarter of Section 20. Marked that "T-6."

Q. And where next?

A. On Gunnison No. 4, which is the Southwest Quarter of Section 20. I marked that "T-7."

Q. And the next one?

A. Horse Shoe No. 2, which is the Northwest one-quarter of Section 29. I will mark that "T-8."

Q. Now, did you park your car at that quarter section and both you and Mr. Thompson again run to these various locations? A. Yes, sir.

Q. And you posted them in the order indicated?

A. Yes.

Q. And then you took a picture of this quarter corner, is that right?

A. Yes. That picture can be very readily identified on account of this prominent hump. It is the only one along the road there that is on the property that I know of.

Q. Let us mark these two pictures in connection with this.

A. Yes, the same pictures, just different exposures.

Q. If they are alike we only need one.

Mr. Hedges: May this be marked Plaintiffs' next in order? [285]

(Testimony of Byron Norris)

The Court: Yes.

The Clerk: Plaintiffs' Exhibit 51 for identification.

(The documents referred to were marked as Plaintiffs' Exhibit 51, for identification.)

The Court: I only see one posting in Exhibit 50.

Mr. Hedges: That is all I can find.

The Witness: Your Honor, it was a poor day to take a picture.

The Court: This one you can see two. One is right behind the other. Is that it?

The Witness: Yes.

Q. By Mr. Hedges: Did you take these pictures, Mr. Norris, or did Mr. Thompson take them?

A. I took them.

Q. The gentleman in the picture, I assume, is Mr. Thompson, is that correct?

The Court: There are four visible on Exhibit 51.

The Witness: I am not sure. Maybe Thompson did take some of those.

The Court: But I can't see but three here.

The Witness: I know I took some of them. It is possible he might have taken some.

The Court: There are four on that, but I see only three on this one. The one to your left is very visible with the naked eye. On this one I can see two, one behind the other, [286] but this one I can only see three. Where do you see the fourth one?

The Witness: I don't, your Honor. I think the car may be hiding it. I can't find it.

The Court: Possibly it is hidden by the car. Is there anything further?

(Testimony of Byron Norris)

Mr. Hedges: Yes, your Honor, I have some more questions.

The Court: I was going to give you a recess.

Mr. Hedges: Fine; I have quite a few more questions.

The Court: Then let us have a short recess.

(Short recess.)

The Court: You may proceed.

Q. By Mr. Hedges: Mr. Norris, do you recall how hot it was on the 7th of September out there in the midst of the desert?

A. No, sir; I do not know, but at the Brawley Hotel it was 120 in the shade.

Q. Undoubtedly it was hotter out where you were than it was in Brawley, is that right?

A. Yes, but on September 7th there was quite a nice breeze so it wasn't unbearable.

Q. Wasn't it the usual nice hot breeze?

A. Yes, it was pretty warm.

Q. Now, I think we finished before recess with the pictures. You then testified, I believe, that you went to [287] Gunnison No. 1, which is located on the Northeast Quarter of Section 20. Will you point out just where you posted the notice there and just how you got to that location?

A. Well, we went from this—

Q. You finished up at the location marked "T-8" on the map? A. Yes.

Q. Then will you indicate just the direction that you took after that to arrive at the Northeast Quarter section 20? A. Went due north here.

(Testimony of Byron Norris)

Q. Right straight up the section line, the quarter section? A. Went up the center of the section.

Q. Where did you post the notice?

A. On Gunnison No. 1, which is the Northeast Quarter of Section 20.

Q. Will you mark that T-9? A. Yes.

Q. Did you drive or did you walk?

A. I walked.

Q. And you walked alone while Mr. Thompson stayed in the car? A. Yes.

Q. You had no witnesses with you at that time?

A. No. [288]

Q. All right. Then where did you go from the point T-9 on the map to the posting of the next location which I believe you said was Gunnison No. 2, in the Northwest Quarter of Section 20?

A. This point here I will designate as T-10.

Q. Directly across the quarter section line, is that right? A. Yes.

Q. And I believe you testified that you posted Gunnison No. 1 at 11:10? A. Yes.

Q. And Gunnison No. 2 at 11:20? A. Yes.

Q. In other words, the operation took ten minutes between the two postings? A. Yes.

Q. All right. Then you came back to the car?

A. Yes.

Q. And what did you do then?

A. I waited until Mr. Thompson did his posting.

Q. Did you see him do his posting?

A. I could see him part of the time—not all the time, no.

Q. Well, when you testified that he then posted Silver Heels 3 and 4 and Horse Shoe 3 and 4 you base that

(Testimony of Byron Norris)

statement [289] on the fact that he probably told you what he was going to do?

A. Well, he took those stakes out and drove them.

Q. Did you see him drive the stakes?

A. Not all of them, no.

Q. What you mean is that he took the four stakes for those four locations with him? A. Yes.

Q. And then you didn't see him again until he came back?

A. Well, you could see him part of the time. It is rolling country there.

Q. I see, but you could not tell from where you were sitting what quarter section he was posting, could you?

A. Not very well, no. I wouldn't attempt to say.

Q. Then how long was he gone?

A. Well, he posted Silver Heels 1 and 2 first.

Q. Are you testifying from what you actually know or what you believe?

A. I know that because he took those two first out with him.

Q. Well, how long after—how much of an interval was he gone while you were sitting there waiting in the car?

A. I didn't notice when he came back to the car but it would be sometime after 12:20. I would say around, [290] possibly, 1:00 o'clock.

Q. All right, then, what did you do and Mr. Thompson do between one o'clock and the time you made the next posting, which you said was Platte No. 1 on the Northeast Quarter of Section 21?

A. Well, he posted Horse Shoe 3 and 4 at 1:45.

(Testimony of Byron Norris)

Q. After he came back?

A. He came back and got the stakes from the car and then went over and posted them.

Q. Oh, I misunderstood you. I thought you said he took the postings for Silver Heels 3 and 4 and Horse Shoe 3 and 4 with him when he left?

A. No, I am sorry—just the two stakes at a time.

Q. And at approximately 1:00 o'clock, according to your best recollection, he came back and he then took the postings for Horse Shoe 3 and 4? A. Yes.

Q. And you still remained in the car? A. Yes.

Q. And when did he come back from posting 3 and 4?

A. Oh, I would say it was shortly after two—possibly 2:10. He got back in a hurry.

Q. Then from 11:20, from the time you posted the Gunnison No. 2 until 2:45 when you posted Platte No. 1, you were sitting in the car all the time, is that right?

A. No, no, I waited until he got back and then we [291] drove this mile east to the South quarter corner of Section 21 and I took the two stakes for Platte 1 and Platte 2 and walked out there and posted them.

Q. While he was doing what?

A. He stayed at the car at that time.

Q. Well, I don't quite follow you. At 11:20 you posted Gunnison No. 2 and Mr. Thompson then took the stakes and the postings for Silver Heels 3 and 4?

A. Yes.

Q. And he returned, you said, about one o'clock and he then took out the postings for Horse Shoe 3 and 4, is that right? A. That is right.

Q. And what time did he come back from that? About two, I believe you said?

A. Shortly after two, yes.

(Testimony of Byron Norris)

Q. And was it then that you drove to the Northeast Quarter of Section 21?

A. Northeast Quarter? No. The south quarter, corner of Section 21.

Q. Your next posting was Platte No. 1 on the northeast quarter section, Section 21?

A. I had to walk from the road here up to the center of the section. My car would not go over the road.

Q. In other words, you had to walk from any point that [292] you went to that wasn't on the road itself?

A. That is right.

Q. You were up here at this point, T-10 on the map, at 11:20, that is correct, isn't it? A. Yes, sir.

Q. You walked up the center section line of Section 20 and I assume you walked back the center section line to where your car was? A. Yes.

Q. And you waited there until Mr. Thompson returned? A. Yes, sir.

Q. And then Mr. Thompson and yourself in your car drove in an easterly direction down the highway, is that right? A. That is right.

Q. And where did you park your car?

A. At the south quarter corner of Section 21 at the point marked "B" on this exhibit.

Q. And what did you do then?

A. I took the postings for Platte 1 and 2 and posted them.

Q. You walked up then the center line of Section 21?

A. Yes, sir.

Q. A distance of what? A half mile?

A. Half mile. [293]

(Testimony of Byron Norris)

Q. And at 2:45 you posted Platte No. 1 claim, the Northeast Quarter of Section 21. Will you indicate where you posted that? A. That?

Q. Yes. A. That will be T-11?

Q. Yes. And what did you do then?

A. I walked due west and posted Platte No. 2.

Q. Let us indicate that on the map by a T-12. That I believe you said, was at 2:50 p.m.? A. Yes, sir.

Q. Then what did you do then?

A. Walked back to the car.

Q. Walked back down the center section line of 21 to the automobile? A. Yes, sir.

Q. And was Mr. Thompson in the car then?

A. Yes.

Q. All right. You may take the stand again. This terrain that you walked over while you were making the postings that were not on the highway was pretty rough terrain, was it not?

A. No, I wouldn't say it was rough terrain. There was one bad wash there.

Q. A sandy soil and up and down, isn't it? [294]

A. No steep hills or anything like that.

Q. Covered with a certain amount of brush?

A. Yes.

Q. Now, when you returned at 2:50 and found Mr. Thompson in the car what did you two gentlemen do then?

A. We drove back to Brawley. That completed our work.

Q. Back to what—was it the Planters Hotel?

A. I believe it was, yes.

(Testimony of Byron Norris)

Q. Now, did you do anything else with respect to these claims or the posting of them on the 7th of September?

A. No, no more than I have described here.

Q. In other words, you were finished for the day when you got back to the Planters Hotel?

A. That is right.

Q. And was Mr. Thompson with you at the Planters Hotel? A. Yes, sir.

Q. So far as you know did he do anything further on it?

A. I think he did not because he came home with me that evening. We drove home.

Mr. Hedges: Very well, no further questions.

The Court: Any redirect examination? Step down. Call your next witness.

Mr. Painter: Mr. Thompson. [295]

HERBERT C. THOMPSON,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Herbert C. Thompson.

Direct Examination

By Mr. Painter:

Q. Mr. Thompson, where do you reside?

A. 2171 Gail Street, Long Beach.

Q. And on the 6th and 7th of September, 1945, were you in the town of Brawley with Mr. Norris, the witness who just testified? A. Yes, sir.

(Testimony of Herbert C. Thompson)

Q. On the 7th of September, 1945, did you go out to the property involved in this action?

A. What date was that?

Q. The 7th of September, 1945? A. Yes.

Q. And with whom did you go out to the property?

A. Well, on the 7th I went out with the engineer, Mr. Norris.

Q. And after you arrived at the property where was the first point that you and Mr. Norris stopped? Will you step down from the stand, Mr. Thompson, and look at Plaintiffs' Exhibit 1 and point out to me the point where [296] you first stopped, bearing in mind that this is the easterly portion of the property and this is the westerly portion?

A. Yes. Those names confuse me there.

Q. Just point it out to us. A. Silver Heels—

Q. Will you point it out to us?

A. Yes. Section 21, right here.

Q. You are pointing to the point that is marked "B," is that correct? A. Yes.

Q. Now, did you at that time assist Mr. Norris and post some notices of locations at points in the neighborhood of point "B"?

A. Well, at ten o'clock we did that.

Q. Commencing at ten o'clock, is that correct?

A. Correct.

Q. And how many of those notices did you post?

A. Four.

Q. Or assist in posting? A. Four.

Q. After you had finished the posting of those notices to what point did you and Mr. Norris drive?

A. West to here.

(Testimony of Herbert C. Thompson)

Q. And you are pointing to the point on Plaintiffs' Exhibit 1 marked "D," is that correct? [297]

A. Correct.

Q. Now, while you were at point "D" did you assist Mr. Norris in posting any notices of location at or about point "D"?

A. Yes, we posted four of them. He held them and I drove the stakes.

Q. Now, after you had completed the posting of those four notices where did you and Mr. Norris go—where did Mr. Norris go? A. He went north.

Q. And what did he carry with him when he went north?

A. He carried No. 1 and 2 Gunnison and posted them.

Q. You saw those two notices of location before he left, did you? A. Yes.

Q. Now, after Mr. Norris had returned from the north what did you do?

A. I went to the—I took the two notices for Silver Heels and took them over to the locations and staked them out.

Q. Now, you say the two Silver Heels, being Defendants' Exhibit R for identification, give me the numbers of the two Silver Heels notices of location which you took with you? A. No. 1.

Q. No, look at your thing first, please. [298]

A. Oh, pardon me, it was No. 3 and 4.

Q. Now, when you took those two notices, that is the Silver Heels 3 and the Silver Heels 4 notices, did you examine them to determine whether or not those notices contained a description of the quarter sections involved?

A. We did.

(Testimony of Herbert C. Thompson)

Q. And did the one which was designated as Silver Heels No. 3 describe the quarter section involved in Section 28? A. Yes.

Q. And did the one which bore the designation of Silver Heels No. 4 have the description of the quarter section involved in Section 28? A. Yes.

Q. After you got down to the claim known as Silver Heels 3, will you describe for us what you did? You can take the stand again, Mr. Norris. Will you describe what you did with the stake and the board that was attached to it and the notice of location which was attached to that? What did you do with it? Just describe it.

A. I drove them into the ground and built a monument around each one out there.

Q. By "a monument" what did you use?

A. The rocks—boulders there.

Q. Now, about what time of the day was it that you put the notice of location on Silver Heels No. 3? [299]

A. At noon, twelve o'clock.

Q. And then where did you go?

A. Then I located the No. 4 Silver Heels.

Q. And what did you do when you got over onto the claim known as Silver Heels No. 4?

A. Well, I drove a stake and built another monument.

Q. And was it the same type of monument? You mean you used rocks? Was it the same type of monument you used on the other claim? A. Yes.

Q. Built rocks up around it?

A. Yes. It is just the customary monument.

Q. Around the base of the stake? A. Yes, sir.

(Testimony of Herbert C. Thompson)

Q. Now, after you had done that what did you do?

A. Well, I hightailed it on back to the car and got the other two location notices on the boards for the Horse Shoe No. 3 and 4.

Q. And then after getting the notices for Horse Shoe No. 3 and 4 what did you do?

A. Came on back and I located No. 3 in the—that would be the Southeast Quarter of 29.

Q. And what did you do after you had located the Southeast Quarter of Section 29?

A. Well, I drove the stake and built the monument.
[300]

Q. About what time of the day was it you did that?

A. Well, that was around about 1:45.

Q. And then where did you go?

A. I went over on the other location, which is Horse Shoe No. 4, in the Southwest Quarter of 29 and proceeded to drive the stake and build a monument.

Q. About what time of the day was it that you drove your stake on the claim designated as Horse Shoe No. 4?

A. 2:00 p.m.

Q. Now, I didn't ask you about the time of day that you drove the stake and posted the notice on Silver Heels No. 4. I believe you testified that Silver Heels No. 3 was about noon? A. Yes.

Q. How long after noon was it that you posted and drove the stake in the ground on Silver Heels No. 4?

A. About 20 minutes.

Q. In other words, 20 minutes after 12?

A. Yes, sir.

(Testimony of Herbert C. Thompson)

Q. And after you had finished over on Horse Shoe No. 4 what time of the day was it?

A. Well, it was about 12:20.

Q. No, I am talking about Horse Shoe No. 4.

A. Horse Shoe No. 4? 12:20 is when I posted it.

Q. No, will you look at Horse Shoe No. 4, please, [301] Mr. Thompson?

A. Oh, wait a minute. It was a little after two.

Q. And then where did you go?

A. Went back to the car.

Q. Now, when you got back to the car did you give Mr. Norris any information as to the time that you had posted these four claims?

Mr. Hedges: We object to that as being hearsay as to the plaintiff, if your Honor please, the information he gave to the other witness, Norris, outside of the presence of the plaintiff.

The Court: It would be hearsay unless Mr. Norris actually saw what he did.

The Witness: All notes that I made—I made notes and checked and checked and double checked everything that we did.

The Court: You yourself put down the date and time?

The Witness: Yes; in my field notes, and I gave them to Mr. Norris. He is the engineer.

Q. By Mr. Painter: Now, after you had returned, after you had finished at Horse Shoe No. 4 and had returned—did you say you returned to the point known as Point "D"? I don't know whether you said so or not. Was that the point where Mr. Norris was waiting for you? A. Yes, that would be right here. [302]

Q. Look over at this map. I am pointing to "D."

A. It is between 20 and 29.

(Testimony of Herbert C. Thompson)

Q. And after you had arrived back at that point what did you and Mr. Norris do?

A. We went back on the road. The road is on the line between the two.

Q. And to what point in the property did you return, again referring to this map?

A. To the north—you see to the north is Platte 3 and 4 and he went north there and—

Q. Will you look at the map, Mr. Thompson? Was the point that you returned to anywhere near point "B"? The first place you stopped? You remember where you stopped the first place in the morning? A. Yes.

Q. Was it anywhere near that point that you returned after leaving point "D"?

A. It was at that point and then he took the locations north.

Q. And which locations did he take and go north with?

A. Platte 1 and 2, as I remember it.

Q. And did he later return to the car? A. Yes.

Q. And then where did you go? [303]

A. Went on back to Brawley.

Mr. Hedges: Back for a Coca Cola?

The Witness: Went back to the air-conditioned hotel.

Mr. Painter: That is all.

Cross-Examination

By Mr. Hedges:

Q. What did you do with Mr. Norris on September 6th, if anything, at this location?

A. Mr. Norris and—we drove out to sort of get a line on the contour of the country and to locate the Government monuments so we would know where to start to work the next day.

(Testimony of Herbert C. Thompson)

Q. Just the two of you on the 6th, or was someone else there? A. No; Mr. Bergere was along.

Q. What did you do? Just drive along the highway that intersects the property where I am indicating on the map? A. Yes, sir.

Q. Did you get out of the car at all on that day?

A. Yes, to check the monuments. The monuments are off the road. They are not on the road.

Q. All three of you got out of the car?

A. Yes, and we all checked.

Q. Did you see anyone else on the property when you [304] drove out there on September 6th?

A. Only some fellows stuck in the sand. I don't know who they were. We asked them if they wanted us to help them. They were just about getting out. I wouldn't know them if I saw them now.

Q. You mean on the highway?

A. Off the highway in one of the gulleys.

Q. On this property?

A. I think it was before we come to No. 1 monument there—they were out there. They were just barely on the property.

Q. What time of the day was it when you were out there on the 6th?

A. It was in the afternoon. I don't remember just what hour.

Q. Early afternoon or late afternoon?

A. Well, it was about, around, between two and three, I judge.

Q. I forgot to ask you, Mr. Thompson, what is your business?

A. Well, I am sort of an assistant engineer to the engineer-geologist, scouting land leases.

(Testimony of Herbert C. Thompson)

Q. Was that your occupation on the 6th of September, 1945? A. Yes, that is right. [305]

Q. Now, will you tell us on the map, or show us on the map the location of the posting that you made on Silver Heels No. 3 on September 7th, 1945? Is the green pencil still available?

Mr. Painter: I will get it.

Q. By Mr. Hedges: It is on the Southeast Quarter of Section 28?

A. Yes, that is right. I located it right here.

Q. Mark it with a "T-13." Now, how did you get to the location T-13 on the map? Did you walk or drive?

A. I walked. I walked rapidly down here and meandered around to this location and posted it.

Q. Now, wait a minute. Be sure you are right in what you are telling us. Now, you are sure you didn't go down the highway and then to this location?

A. No, no.

Q. You walked across country?

A. Open country. This is all open country. You can walk as fast as you can walk in the sand and that was the easiest way to get there, the quickest.

Q. You are indicating—you started at the point "D" on the map?

A. No, no, wait a minute. Where is the highway?

Q. Right here.

A. I went right across here. [306]

Q. Indicating that you started at point "D" on the map, Plaintiffs' Exhibit 1, and went in a southerly direction down the section line—center section line?

A. I stepped it off—checked that and it was right about—

(Testimony of Herbert C. Thompson)

Q. You are referring now to the center of Section 29? A. Yes.

Q. Now, which way did you go from there?

A. I meandered right through here.

Q. You went in a semi-circle in an easterly direction?

A. Yes, on the ridge, see. To the point marked T-13, yes.

Q. T-13, is that right?

A. That is right. And I located that while I was there.

Q. What do you mean by "there"?

A. That is the Southwest Quarter of Section 28.

Q. The claim known as Silver Heels No. 4, is that correct? A. That is right.

Q. Now, this map that you are looking at here—did you make this map, the one you have in your hand?

A. No. That is the one we had, the map Mr. Norris made.

Q. And the figures that are designated on this map as [307] to time, they were not put on there by you, were they? A. No, but I witnessed the time.

Q. Did you keep an independent record of the time that you posted these claims?

A. Yes, I made my field notes along with him and he took them all.

Q. You don't have your notes?

A. No; I gave them to him. We checked and double checked and did everything according to Hoyle.

Q. When you left the Southwest Quarter of Section 28 from a point marked T-14, where did you go then and by what direction?

A. Then I checked my distance and went on a bee-line instead of meandering and went on back to the car.

(Testimony of Herbert C. Thompson)

Q. Wait a minute. You can't say "meander." It does not help us in the record. Did you go in a northerly direction? A. No, west.

Q. Westerly? A. Yes.

Q. In other words, you backtracked over the same route you took to get there? A. Yes, more direct.

Q. And you went in a westerly direction, in a semi-circle, to the center of Section 29 and then due north. Is [308] that right? You went back to point "D" again?

A. That is right.

Q. Back up to here?

A. Yes, that is right. You see, I did that to check with that monument.

Q. You only had the two stakes with you at the time you went down to points T-13 and T-14? A. Yes.

Q. Then did you go back up to the car again?

A. Yes

Q. What did you do then?

A. I got the other two stakes, the Horse Shoe 3 and 4 and went back and located them.

Q. Now, tell us the route you took to get back?

A. Right straight back here.

Q. From point "D" down to the center line of Section 29? A. That is right.

Q. To the Southeast Quarter of Section 29, is that right? A. Yes.

Q. All right. Where did you post the notice on that quarter section? A. Right here.

Q. Let us indicate that with a T-15. [309]

A. All right.

Q. You say to the best of your knowledge or recollection now that was about 1:45 p.m.? A. Yes.

(Testimony of Herbert C. Thompson)

Q. And you put these down in your field notes?

A. Yes.

Q. You carried a watch?

A. Mr. Norris did all the timing.

Q. You didn't have a watch with you?

A. No.

Q. Now, how did you get from there over to the Southwest Quarter of Section 29? A. I walked.

Q. Walked right across the section?

A. Yes; and located it and built the monument.

Q. Let us mark that with a T-16. Then you went back to the car again, straight up the center line of Section 29 to point "D" to the automobile?

A. Yes, sir.

Q. Then the two of you drove off down the highway in an easterly direction? A. Yes.

Q. All right, take the stand again.

The Court. Do you have any further questions?

Mr. Hedges: Yes, your Honor, I have one or two more. [310]

Q. By Mr. Hedges: You said on the claims you and Mr. Norris staked together he held the stakes and you hammered them into the ground, is that right?

A. As I remember that is the way it was done.

Q. How many hammers did you have with you that day?

A. Well, a hammer and a hand axe and a pick.

Q. A little of everything? A. Yes.

Q. What did you take with you when you went down to stake your claims individually?

A. I had just a little—I don't remember—I just had the small hatchet, hammer, and I used—I found I could use boulders down there.

(Testimony of Herbert C. Thompson)

Q. How far did you drive the stakes into the ground?

A. Oh, about 10 or 12 inches.

Q. Is that sandy soil there? A. Yes.

Q. Wasn't hard?

A. That is why I built the monument.

Q. Mr. Norris testified that you left him at about 11:20 to go down and post Silver Heels 3 and 4?

A. That is approximately correct.

Q. Is that correct to the best of your recollection?

A. Yes, sir.

Q. Then when you came back from posting Silver Heels [311] 3 and 4 did you tell Mr. Norris the approximate time that you posted those two notices?

A. Not only told him but I had it on the little note I gave him.

Q. How did you estimate it? You said you didn't have a watch.

A. Well, it takes just about so long to walk that distance. We had already walked it, you see, according to the time here, and he checked and found that I was about right. He made all the notes on that.

Q. He couldn't see you at all times, could he, when you were down at Silver Heels 3 and 4?

A. No, but I could see him. I could see the road all the time.

Q. Did you have a hand signalling system, or how did you arrive at the time? A. What?

Q. Did you have a hand signalling system?

A. Well, I got down there and stood up and gave the signal. I don't remember. I think he saw me most of the time.

Q. All right. In other words, you estimated the approximate time that you got to these locations?

(Testimony of Herbert C. Thompson)

A. Yes, that is right, and in checking back that is correct. [312]

Q. The time that he has marked on Defendants' Exhibit R, are approximate times insofar as the posting of the four claims that you posted is concerned, is that correct?

A. Well, they are approximate by checking. You see, if you notice the time we posted the last one and the time I got there and back it checked with the time it took me to go to the others and the hiking is about the same—the walking and spacing is about the same, so it is pretty accurate.

Mr. Hedges: That is all.

The Court: Any further questions?

Mr. Painter: No.

The Court: Call your next witness.

Mr. Painter: Your Honor, I have reached the point, because of the fact a situation arose this afternoon, that I am going to have to tell the court I cannot proceed until my witness has a wisdom tooth extracted, Mr. Wilson. He is our engineer. You saw him in court for the last two days. We decided today he had better go down to see a dentist and have the tooth taken care of.

He left and I have used up my last witness. However, Mr. Wood told me that he would be able to proceed with a Mr. Lancaster, one of his witnesses, to fill in the time.

Mr. Wood: If your Honor wishes to proceed out of order I will be glad to do that. [313]

The Court: Well, these witnesses coming from a distance we will use up the 20 or 25 minutes remaining.

Mr. Wood: Mr. Lancaster lives here.

The Court: We will take him, anyway.

WILLIAM F. LANCASTER,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: William F. Lancaster.

Direct Examination

By Mr. Wood:

Q. Mr. Lancaster, I show you two pictures and ask you if you have ever seen those before? A. Yes.

Q. Did you take those pictures? A. I did.

Q. And on what date?

A. On March 17, 1946.

Q. And they were taken where?

A. On the property in question, Northeast Quarter of Section 28.

Q. And do you know whose work that was?

A. Yes, this is work done by Mr. Lewis.

Q. Both of those pictures are taken on the same [314] quarter section? A. That is right.

Q. And they show two different ends of the work, is that right? A. That is correct.

Mr. Wood: We offer these, if the court please, as a defendants' exhibit.

Mr. Hedges: Did he say the Northwest Quarter of Section 28?

The Witness: Northeast Quarter.

The Court: Are these the same or different views?

Mr. Wood: Different views of the same piece of work, your Honor.

Mr. Hedges: The exhibit number, please?

(Testimony of William F. Lancaster)

The Court: They may be received.

(The documents referred to were marked as Defendants' Exhibits S and T, and were received in evidence.)

Q. By Mr. Wood: Now, Mr. Lancaster, I show you 16 documents and ask you to examine them and tell me whether you have seen those before?

A. Those are the ones.

Q. Now, directing your attention to a document that has reference to the Northeast Quarter of Section 20, Township 14 South, Range 12 East, was there a duplicate [315] document of that made?

A. Yes, there was.

Q. And on what date was that, Mr. Lancaster?

A. That was made on January 17th.

Q. And what was done with the duplicate document?

A. The duplicate document was placed into the ground in a can on the northeast Quarter of Section 20.

Q. And who placed it there?

A. Let me see, Mr. John A. Jose.

Mr. Hedges: Just a minute. We object to that as being a conclusion of this witness.

The Court: Were you along?

The Witness: Yes, I was along.

Q. By Mr. Wood: You were present with Mr. John A. Jose on that day? A. Yes.

Q. Throughout the entire day?

A. The entire day, yes.

Q. Now, what was done with the documents that you have in your hand?

The Court: What is the date of that document?

Mr. Wood: 17th of January, 1946.

(Testimony of William F. Lancaster)

The Witness: Well, this document—I filed this document with the County Recorder on the same day at 4:30 p.m. [316]

Q. Now, after you got it back from the County Recorder did you do anything further with the document?

A. Yes. After we completed our location work on the property I re-filed this document with the County Recorder on April 12th, 1946.

Q. Now, did you add anything to the document prior to the refiling of it?

A. Yes. I myself filled in the statement on the back of it, marking the boundaries, which read:

“The Southeast Quarter of Section 20, Township 14 South, Range 12 East. S.B.B. & M.”

And then in the statement of discovery work performed I filled in the following:

“By performing at least \$1.00 worth of work for each acre included in said claim, removing a minimum of 600 cubic yards of material to discovery of Montmorillonite on said claim, and sinking a shaft and open cut to a depth of at least ten feet from the lowest part of the rim at the surface.”

And then I signed my name as for the rest of the owners.

Q. And after you had done that you had it re-recorded? A. That is right, on April 12th, 1946.

Mr. Wood: We offer this as the defendants' next exhibit, if the court please. [317]

The Court: All right.

The Clerk: Defendants' Exhibit U.

(The document referred to was marked as Defendants' Exhibit U, and was received in evidence.)

[DEFENDANTS' EXHIBIT U]

NOTICE OF LOCATION
Placer Claim

Notice Is Hereby Given: That the undersigned citizens of the United States, over the age of twenty-one years, in compliance with the requirements of Chapter VI, Title 32, of the revised Statutes of the United States and the local customs, laws and regulations, have this day located and claim the following described Placer Mining grounds, viz:

Being the Northeast $\frac{1}{4}$ Section 20 Township 14 South, Range 12 East

together with all water and timber appurtenant, allowed by law, are hereby claimed.

This Claim consisting of 160 acres, or number of feet claimed, shall be known as the Clay No. 3 District, County of Imperial, State of California, Section 20, Township 14 S, Range 12 E, Meridian S.B.B.M.

This Claim to be identified by its proximity to the following natural object or permanent monument, to-wit:

Located This 17th day of January, 1946.

The date of the discovery and posting of this notice is the 17th day of January, 1946.

Locators:

| | |
|-----------------|------------------|
| Ella Jackman | Corda Lancaster |
| John I. Jackman | Wm. F. Lancaster |
| Olga Jose | Geo. T. Renaker |
| John A. Jose | John S. Patten |

(Defendants' Exhibit U)

Witnesses

The exterior boundaries of a Placer Claim cannot be limited by any local mining regulation to less than 25x1500 feet, measuring from the center of vein on either side.

Pub. Res. Code 2313, within ninety days after the posting of this notice of location upon a lode mining claim, placer claim, tunnel right or location, or mill site claim or location, the locator shall record a true copy of the notice together with a statement of the markings of the boundaries as required in this chapter, and of the performance of the required discovery work, in the office of the County Recorder of the County in which such claim is situated.

STATEMENT OF THE MARKINGS OF THE
BOUNDARIES

The markings of the boundaries of the aforesaid Claim as required by Section 2303 Public Resources Code, are designated and described as:

Northeast $\frac{1}{4}$ of Section 20, Township 14 South, Range 12 East, SBBM

STATEMENT OF DISCOVERY WORK
PERFORMED

The locator has performed discovery work as required by Section 2304, Public Resources Code, as follows:

By performing at least one dollar worth of work for each acre included in said claim, removing a minimum of

(Defendants' Exhibit U)

600 cubic yards of material to discovery of Montmorillonite on said claim, and making an open cut to a depth of at least ten feet below the surface.

| | |
|---------------------|---------------------|
| Ella Jackman | John I. Jackman |
| by Wm. F. Lancaster | by Wm. F. Lancaster |
| Corda Lancaster | John S. Patten |
| by Wm. F. Lancaster | by Wm. F. Lancaster |
| John A. Jose | Olga Jose |
| by Wm. F. Lancaster | by Wm. F. Lancaster |

Locators

Geo. T. Renaker
By Wm. F. Lancaster
Wm. F. Lancaster

Order No. 48

When recorded, please mail this Instrument to
Wm. F. Lancaster
1110 West 50th Street
Los Angeles 37, Calif.

Recorded Jan 17 1946 4:30 P.M. in Book 624 Page
292 Official Records Imperial County, Calif.

At Request of

| | | |
|---|----------------|--------------|
| Grantee..... | Grantor..... | Trustee..... |
| Mortgagee..... | Mortgagor..... | |
| Wm. F. Lancaster | | |
| Sheriff..... | Attorney..... | Locator..... |
| Evalyn B. Westerfield, County Recorder By Evalyn B. Westerfield Deputy | | |

(Defendants' Exhibit U)

I certify that I have correctly transcribed this document in above mentioned book. B. J. Hyne Copyist

\$1.00 Indexed Compared Book & Paged

Recorded Apr 12 1946 10 A.M. in Book 624 Page 374 Official Records Imperial County, Calif.

At Request of

Grantee..... Grantor..... Trustee.....

Mortgagee..... Mortgagor.....

Wm. F. Lancaster

Sheriff..... Attorney..... Locator.....

Evalyn B. Westerfield, County Recorder By Evalyn B. Westerfield Deputy

I certify that I have correctly transcribed this document in above mentioned book. Jo Stevens Copyist

\$1.00 Indexed Compared Book & Paged

Case No. 6105-Y Civ. Hattie M. Houck vs. J. A. Jose et al. Defts. Exhibit U. Date Jun. 4, 1947. No. U in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.

Q. By Mr. Wood: I show you a document which purports to affect the Northwest Quarter of Section 20, and will ask you to examine that and tell me what it is.

A. I have seen this document and I placed the duplicate in the ground.

Q. You had an exact duplicate of that placed in the ground? A. Yes.

Q. Where was it placed?

A. On the Northwest Quarter of Section 20.

(Testimony of William F. Lancaster)

Q. That was placed in the ground by yourself or Mr. Jose? A. Mr. Jose.

Q. But you were present at the time?

A. I was present at the time.

Q. Now, what did you do with the document that you have in your hand?

A. I had this document recorded on January 17th in the County Recorder's office in Imperial County.

Q. Was the document subsequently returned to you?

A. It was. [318]

Q. Did you add anything to it?

A. Yes. On the back of this document following the "Markings of boundaries," I put "Southeast Quarter, Section 29, Township 14 South, Range 12 East, S.B.B.M."

And under "Statement of discovery work performed: By performing at least \$1.00 worth of work for each acre included in said claim, removing a minimum of 560 cubic yards of material to discovery of Montmorillonite on said claim, and making an open cut to a depth of at least ten feet below the surface," and signed my name.

Q. And the names of the other locaters by yourself?

A. Yes.

Mr. Wood: We offer this in evidence as the defendants' next exhibit in evidence.

The Court: Very well.

(The document referred to was marked as Defendants' Exhibit V, and was received in evidence.)

Q. By Mr. Wood: I show you now a document, Mr. Lancaster, that purports to affect the Southwest one-quarter of Section 20, Township 14 South, Range 12

(Testimony of William F. Lancaster)

East, and ask you to examine that and tell me whether you have ever seen it before? A. Yes, I have.

Q. And when?

A. On January 17th, 1946. [319]

Q. And did you see a duplicate of that document?

A. Yes, I saw it made.

Q. And what was done with it?

A. The duplicate was placed in a can in the ground in the Southwest Quarter of Section 20.

Q. By Mr. Jose?

A. Mr. Jose and myself.

Q. Now, what did you do with the original that you have in your hand?

A. Had this document filed with the County Recorder of Imperial County.

Q. On what date?

A. The 17th of January, 1946.

Q. Was that document returned to you by the County Recorder? A. It was.

Q. Did you add anything to it?

A. I did, yes. On the back of the statement: "Marking of boundaries: Southwest Quarter of Section 20, Township 14 South, Range 12 East, S.B.B.M. Statement of discovery work performed: By performing at least \$1.00 worth of work for each acre included in said claim, removing a minimum of 650 cubic yards of material to discovery of Montmorillonite on said claim, and making an open cut and sinking a shaft to a depth of at least ten feet from the lowest part of the rim at the surface," and signed by myself [320] for the rest of the locators and re-recorded on April 12th, 1946.

(Testimony of William F. Lancaster)

Mr. Wood: We offer this as Defendants' Exhibit next in order in evidence.

The Court: It will be received.

(The document referred to was marked as Defendants' Exhibit W, and was received in evidence.)

Q. By Mr. Wood: I now show you a document, Mr. Lancaster, that purports to affect the Southeast one-quarter of Section 20, Township 14 South, Range 12 East, and ask you to examine that and tell me whether you have ever seen it before? A. I have.

Q. And on what date?

A. On January 17th, 1946.

Q. Was there a duplicate of that document made?

A. There was.

Q. And what was done with the duplicate?

A. Placed in a can in the ground on the Southeast Quarter of Section 20.

Q. By whom? A. Mr. Jose.

Q. You saw him do it? A. I saw him do it.

Q. What was done with the document that you have in [321] your hand?

A. Recorded that on January 17th, 1946, in the County Recorder's office of Imperial County.

Q. Was that document subsequently returned to you by the County Recorder? A. It was.

Q. Did you add anything to it?

A. Yes. On the back of the document: "Statement of marking of boundaries," I said—

The Court: You put in the same language?

Mr. Wood: The same language with only this exception.

(Testimony of William F. Lancaster)

The Court: You put the same legend on that you put on the others and had it re-recorded, is that correct?

Mr. Wood: With one exception, your Honor, with the exception of the description and the number of cubic yards removed.

The Court: All right, if there is a difference in the cubic yards just say how many cubic yards it indicates. It is in the record.

The Witness: All right, 600 cubic yards of material taken out of the claim.

Mr. Wood: We offer this as the defendants' next in evidence.

The Court: It will be received. [322]

(The document referred to was marked as Defendants' Exhibit X, and was received in evidence.)

Mr. Wood: If your Honor has no objection, may I ask the witness to examine all of these and ask him whether he put them in in the same manner and the same quarter section?

The Court: Yes.

Mr. Hedges: We have no objection.

The Court: They can cross examine if they care to in more detail.

Q. By Mr. Wood: Just examine all these documents and then I will ask you some questions. A. Yes.

Q. Now, were duplicates made of all those documents?

A. There were.

Q. And were those duplicates put in cans and put into the ground in the various quarter sections described in the documents? A. They were.

(Testimony of William F. Lancaster)

Q. By yourself and Mr. Jose?

A. That is right.

Q. And these original documents were all recorded with the County Recorder's office?

A. That is right.

Q. And after they came back from there were endorsed on the back by you, a statement of the markings of the [323] boundaries and a statement of the work performed as appears on each document?

A. That is right.

Q. And they were then re-recorded with the County Recorder's office? A. That is right.

Mr. Wood: We offer these as the defendants' next in order.

The Court: How many do you have?

The Clerk: There are four.

Mr. Wood: They can be marked as one exhibit as far as I am concerned.

The Court: They are all dated the same?

Mr. Wood: Yes.

The Clerk: The complete group is exhibit U to X, inclusive, and then AA to JJ, inclusive.

(The documents referred to were marked as Defendants' Exhibits U to X and were received in evidence.)

(The documents referred to were marked as Defendants' Exhibits AA to JJ, inclusive, and were received in evidence.)

[Clerk's Note: Counsel stipulate Exhibits V to Z and AA to JJ inclusive, are similar to Exhibit U, save and except as hereinafter set forth:

In Exhibit W, the yards of earth removed are stated to be 650 cubic yards.

In Exhibit X, the yards of earth removed are stated to be 600 cubic yards.

In Exhibit Y, the yards of earth removed are stated to be 850 cubic yards.

In Exhibit Z, the yards of earth removed are stated to be 850 cubic yards.

In Exhibit AA, the yards of earth removed are stated to be 1,740 cubic yards.

In Exhibit BB, the yards of earth removed are stated to be 830 cubic yards.

In Exhibit CC, the yards of earth removed are stated to be 460 cubic yards.

In Exhibit DD, the yards of earth removed are stated to be 820 cubic yards.

In Exhibit EE, the yards of earth removed are stated to be 400 cubic yards.

In Exhibit FF, the yards of earth removed are stated to be 400 cubic yards.

In Exhibit GG, the yards of earth removed are stated to be 1,000 cubic yards.

In Exhibit HH, the yards of earth removed are stated to be 725 cubic yards.

In Exhibit II, the yards of earth removed are stated to be 550 cubic yards.

In Exhibit JJ, the yards of earth removed are stated to be 600 cubic yards.

Each of said Notices of Location contain the name of the claim involved, its correct legal description, and the book and page in which said Notice of Location was recorded in the Office of the County Recorder of Imperial County, California.]

(Testimony of William F. Lancaster)

Q. By Mr. Wood: Now, Mr. Lancaster, were you ever on this property prior to the 17th day of January, 1946? A. Yes, many times.

Q. Approximately when were you first on the property? [324]

A. It was back in 1939 or 1940.

Q. Now, after January 17th, 1946 were you on the property? A. What day?

Q. After January 17th, 1946? A. Oh, yes.

Q. Were you on the property while any work was being done there by Mr. Jose? A. Yes, I was.

Q. Can you tell us the approximate date of that?

A. Let me see. I was down there along the first of February of 1946, and again about the middle of February, and again on March 17th, I believe.

Q. Now, what work was Mr. Jose doing there?

A. He was performing his location work at the time.

Mr. Hedges: That is objected to as being a conclusion of this witness.

The Court: That may be stricken. What was he doing? Describe what he was doing.

The Witness: Well, he was digging a pit and piling up dirt pursuant to the location work on the property.

Q. By Mr. Wood: Do you remember how many quarter sections he covered during that period of time?

A. Yes; he worked on all 16 quarter sections at the time.

Q. Do you recall at this time approximately how much [325] money had been expended?

A. Yes. He had expended over \$1,000.00 up to that time.

(Testimony of William F. Lancaster)

Mr. Hedges: Just a minute. I object to that as a conclusion of this witness when he said how much money he spent unless he knows. There is no proper foundation.

Q. By Mr. Wood: Who was paying the bills for that work? A. I was.

Q. And how much money had you paid out in connection with that work?

A. Well, to be exact I paid out \$1,367.00 for that work down there.

Q. That was work done by Mr. Jose?

A. That is right.

Q. On all 16 quarter sections?

A. That is right.

Mr. Wood: You may cross examine.

Cross Examination

By Mr. Hedges:

Q. Did you pay this money, this \$1,367.00 direct to Mr. Jose?

A. I paid part to Mr. Jose and part to Mr. Dexter.

Q. How much of the \$1,367.00 did you pay to Mr. Jose? A. All but \$720.00. [326]

Q. In other words, \$600.00 you paid to Mr. Dexter?

A. That is right.

Q. \$700.00, roughly, to Mr. Jose. Who is Mr. Dexter?

(Testimony of William F. Lancaster)

A. He was the man operating a bulldozer down there.

Q. Operating a bulldozer?

A. Yes, sir; and doing also some pick and shovel work.

Q. Did he render a bill for his services to the extent of \$600.00? A. Yes, he did.

Q. Do you have that?

A. I think I have it in my files or cancelled checks for it, either one.

Q. Would you produce that when the trial opens tomorrow? A. Yes, sir.

Q. And the \$700.00 that you paid to Mr. Jose, was that pursuant to an invoice of some type?

A. Mr. Jose gave me a receipt for the money expended there, showing me the bill which I checked at the time.

Q. Do you have the receipt? A. Yes.

Q. Would you produce that tomorrow, too, please?

A. Yes.

Q. And you said you paid—did Mr. Jose give you any of the bills that represented any of the \$700.00 payment? [327] A. No, he did not.

Q. The only thing you have is his receipt?

A. That is right.

Q. You have testified, I believe, that you made all of the payments for the work done out there for this period of time on the 16 claims, is that correct?

A. That is right.

(Testimony of William F. Lancaster)

Q. The total amount expended was \$1,367.00?

A. That is right.

Q. Was that all the work that was performed on the property? A. Up to that time, it was, yes.

Q. Up to what time now?

A. Up to March 17th.

Mr. Hedges: No further questions.

The Court: All right, step down.

Any redirect examination?

Mr. Wood: No, your Honor.

The Court: Do you want him to produce those bills tomorrow?

Mr. Hedges: I assumed he would be here.

The Witness: I paid one by cashier's check.

The Court: Whatever you have bring along with you tomorrow.

All right, gentlemen, we will recess until tomorrow morning at 10:00 o'clock. [328]

(Whereupon, at 4:45 o'clock p.m., a recess was had until Thursday, June 5th, 1947, at 10:00 o'clock a.m.) [329]

Los Angeles, California, Thursday, June 5, 1947
10:00 A. M.

The Court: Proceed with the cause on trial.

Mr. Hedges: May I ask if Mr. Lancaster brought the receipts that I asked for yesterday?

Mr. Wood: We have some of them. I will have them for you.

The Court: Call your next witness.

Mr. Painter: Mr. Wilson.

WILLIAM E. WILSON,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: William E. Wilson.

Direct Examination

By Mr. Painter:

Q. Mr. Wilson, what is your business or profession?

A. I am a mining engineer.

Q. And what are you presently engaged in doing?

A. Mining engineering.

Q. And are you engaged in mining engineering for yourself or for others?

A. At the present time I am engaged for myself almost exclusively, and have been for the past several years. I [334] own and operate the Paragon Hydraulic Mine at Forest Hills, California and operate it at the present time and have at all times for the past eight years.

Q. And is Forest Hills your home?

A. Forest Hills is my home.

(Testimony of William E. Wilson)

Q. For how long a period of time have you been engaged in your profession as mining engineer?

A. For 30 years.

Q. And primarily in what locality have you been engaged in that profession?

A. Primarily in the State of California, extending from Canada through into Old Mexico, but mostly in California, in the Mother Lode areas and the desert areas and a good deal of time around and through Arizona and the desert regions around Yuma.

Q. Are you familiar with the property here involved?

A. Yes, I am.

Q. And when did you first become acquainted with the property?

A. In the first of June—in the first days of June, 1945.

Q. Prior to that time had you been generally familiar with this particular property—that is, in this area?

A. I had made mining examinations in the area and in [335] the mountains and examined the Monte Cristo Mine out of Wickenberg in Arizona and made many trips into Salton Sea area and through Blythe and in that area.

Q. In connection with the practice of your profession as an engineer has it been a part of your duties to estimate the cost of excavating dirt and soil of a character similar to the dirt and soil involved in the property involved in this action? A. Yes.

Q. And how frequently over the past 15 or 20 years have you been required to do so?

A. Well, the excavation of soils in the engineering profession is something that is daily incidental to the construction of roads, the building of bridges, removing of

(Testimony of William E. Wilson)

earth, sinking of shafts and dredging and that sort of thing. That is a part of my profession. It is done regularly.

Q. And were you familiar with the reasonable value or worth of moving earth of the character which is involved in this action on this property during the years 1945 and 1946? A. Yes, sir.

Q. You say that you visited this property first in June of 1945? A. That is right.

Q. In company with whom? [336]

A. With Mr. J. C. Bergere and Mr. Willard Wallace.

Q. What was the purpose of this visit to the property?

A. We visited some area south of the property under discussion here. Mr. Bergere and Mr. Wallace at that time contemplated acquiring title to some of those lands and I made a general examination of the area.

Q. And did you during the course of that visit actually go up on the property here involved?

A. I did, but only incidentally.

Q. When did you next visit the property in question?

A. I visited it next on the 4th day of November, 1945.

Q. For how long a period of time after the 4th day of November, 1945 were you in and about the property?

A. Continuously until November 12th.

Q. By "continuously" you mean every day you were on the property?

A. Every day, yes, from November 4th through November 11th inclusive, and I left on the morning of the 12th and came to Los Angeles.

Q. By whom were you employed to make this trip to the property? A. By Mr. Willard Wallace.

(Testimony of William E. Wilson)

Q. And what was the purpose of the visit to the property on this occasion? [337]

A. The purpose of the visit to the property here was to make an examination, locate the development work or exploration work.

Q. And did you supervise the doing of any work on the property during that period of time?

A. Yes, I laid it out and directed it.

Q. Prior to the time that you commenced your work on the property did you make a physical examination of the property during this period from the 4th of November on? A. Yes, I did.

Q. And in making that physical examination of the property did you personally travel over each and every one of the quarter sections involved in this action?

A. I did.

Q. Will you describe for us the physical appearance and general contour of the property?

A. Yes, I will. There is a road traversing the property that bisects—I took as a middle line from east to west as you enter the property. We go through to the western boundary. Starting at the western boundary of the property we come back one thousand feet until we reach the rim of an escarpment that probably is about 40 feet in elevation above the floor of the Valley right there.

This escarpment has a generally northwest trend north of the road and runs north and south of the road into [338] the foothill region. After you drop off this escarpment, passing to the east, you come into a typical desert terrain where the surface is cut and eroded by small streams. There are small promontories or obstructions in the desert that look almost like small islands where

(Testimony of William E. Wilson)

the softer soils have been eroded away beyond them and as you pass on another mile and a half you come into a typical desert creek bed that is on the eastern extremity of the property. In all appearances it is typical of any of the desert lands that would be found in the southwest. There are no distinguishing characteristics.

Q. Did you personally supervise any exploratory work on the property?

A. Supervised all that was done and in Mr. Wallace's behalf.

Q. Prior to the time that you started the exploratory work did you lay out a program which was to be followed—that is, where the work was to be done and the nature of the work that was to be done?

A. It was necessary to do that because I wanted the money spent there to return a maximum value to Mr. Wallace and his associates from an engineering standpoint—that is, possible production later on. And also to give them some accurate idea of the physical properties of the property.

Q. Did you discuss this exploratory work—that is [339] the doing of the exploratory work with anyone prior to the time that it was started, outside of Mr. Wallace?

Mr. Hedges: Will you read that question?

(Question read.)

A. No one except Mr. Igle.

Q. By Mr. Painter: Who is he?

A. A contractor and then a resident in the Planters Hotel in Brawley. He owned equipment that seemed to me suitable. I examined the equipment and found out it

(Testimony of William E. Wilson)

was owned by Mr. Igle and I looked him up in the Planters Hotel.

Q. Now, prior to the time that any work was commenced on the property, will you start in and describe for us the detail of what you did preparatory to starting the work? A. May I step down, please?

The Court: Yes.

A. If we are agreed that this is the south boundary of Section 21 and Section 20—I will make no reference to these sections in here.

I went to the General Land Office and determined that the base line or the southern boundary of these two sections were determined by survey, the first of which was made in 1857 and the second in 1859, confirmed again in 1899, or 1889, and the bearing of this line, which is important to this discussion, was north 89 degrees and 58 minutes west.

The reason I wanted to get the bearing was because [340] it wasn't possible or desirable to make a solar observation in the desert. Monuments could not be changed there because we were not making a survey; we were laying out work that had already been marked and we wished to lay the work out in conformity, but it was necessary to run a traverse to determine that those monuments had not been moved. I found them all to be in line and in setting up the transit over this position here—

Q. Will you describe that position?

A. All right. This position would be the southwest corner of Section 28 and the Southeast corner—I beg your pardon, wait until I put my glasses on. I know that this is Section 21 and not 28 from memory. This would be the southwest corner of Section 21 and the southeast

(Testimony of William E. Wilson)

corner of Section 20. Incidentally, it would be the north-east corner of Section 29 and the northwest corner of section 28.

Setting the transit up over this point and orienting it in a great circle that would pass through these two monuments here, I chained back 2,640 feet to a point in this area here. Then I turned an angle on the vernier, using the compass at no time, turned an angle on the vernier of north no degrees and two minutes west and chained through 3,400 feet to this point here. The 3,400 feet was an arbitrary figure so far as I was concerned. I was interested only in bisecting this section and running parallel to [341] these side lines. The bearing of this side line, according to the survey and the records in the United States Land Office, is north no degrees and two minutes west. This side line conformed with that.

Coming back to this point I set the transit up again and oriented this line and chained 3,400 feet through to this point, the object of that being that I had determined that trenching could be done so that the excavations could be more extensive in any one place and fall equally on one claim and on the other, but it was necessary to have an accurate division of the quarter sections to do that.

The second step was to come back again and orient the transit and chain 2,640 feet to this point here, to turn an angle of no degrees, two minutes west on the vernier and run 3,400 feet through coming back to this point, to repeat the process, and run a straight line through.

This line here—I see it is marked on here, is north three minutes. In other words, there is only one minute difference between the side line here and this line here. This line here, north zero and two minutes west, is com-

(Testimony of William E. Wilson)

mon to both sections and was straight and parallels this line.

When that was done, coming back to the point of beginning, I measured out here to this point 1100 feet and located the first pit. I came on out here three thousand, [342] one hundred feet and located the second point.

Q. Now, Mr. Wilson, while you are going through that phase of it will you go back and start in, say, when you reached this point here? A. Yes.

Q. Tell us the quarter sections involved in that pit and say that you located your pit involving the quarter section thus and so and thus and so?

A. All right, fine. When I came to this point here and located the work—it was to locate the location work, the exploration or the discovery work on the Northeast Quarter of Section 28 and the Northwest Quarter of Section 28.

Q. Do the same thing with the next one and take all the locations you made.

A. All right. Passing down here then 3,100 feet I laid out a pit area here that would satisfy the development work on the Southeast Quarter of Section 28 and on the Southwest Quarter of Section 28.

Again returning to the starting point here, I came out here 1,900 feet and laid out the pit location that would satisfy the discovery work on the Southeast Quarter of Section 29, and on the Southwest Quarter of Section 29.

Q. Mr. Wilson, I believe you have made a mistake.

A. Yes, correction, please. That is Section 21. In [343] passing on here to 3,100 feet I laid out a pit location across this line here that would satisfy the work on the Northwest section—Northwest Quarter of Section 21 and on the Northeast Quarter of Section 21.

(Testimony of William E. Wilson)

Q. Now, that point you are pointing to is the one we have heretofore marked with the point "D"?

A. Yes, at point "D." Coming back to point "D" I came along this line here 1,100 feet and laid out a pit across this line that would satisfy the development work on the Northeast Quarter of Section 29 and on the Northwest Quarter of Section 29.

Continuing on into the desert 3,100 feet I laid out another pit across this section line here that would satisfy the development or discovery work on the Northwest Quarter of Section 29 and—beg your pardon, on the Southwest Quarter of Section 29 and on the Southeast Quarter of Section 29.

Returning to point "D" I went 1,400 feet along the line previously described and laid out a pit.

Q. By Mr. Wood: How many feet?

A. 1,400 feet. And laid out a pit that would satisfy the discovery work on the Southwest Quarter of Section 20 and on the Southeast Quarter of Section 20.

Continuing on over 3,400 feet I laid out another pit that would satisfy the discovery work on the Northwest [344] Quarter of Section 20 and the Northeast Quarter of Section 20.

Q. By Mr. Painter: Now, will you resume the stand, please. Mr. Wilson, after you had located these points which you have just described, which we will call the points for the discovery work, did you place any stakes in and about the area to designate the spot where that pit was to be placed

A. Yes, I did.

(Testimony of William E. Wilson)

Q. And will you describe for us just how you placed those stakes in the ground—that is, the approximate measurement between stakes?

A. Yes. The stakes were the standard surveyors' stakes. They were about two inches in width, 7/8ths of an inch thick, and 18 inches in length. Those stakes were so placed that the center line stakes were clearly marked and 20 feet from the point of excavation so it would not be disturbed during the time of excavation.

Then taking a distance sixty feet to the west another stake was placed. Coming back from the center line stakes sixty feet to the east, a stake was placed so that there would be 120 feet between the first two stakes. Then secondary stakes were placed 30 feet to the west and 30 feet to the east to provide for the approach and for the get-away from the proposed excavation which had been decided at that [345] time could best be done with a D-8 bulldozer, a conventional carry-all.

Q. Now, that was true on each one of the pits involved where you laid them out. You laid out the stakes as you have stated?

A. That is right. It gave the driver an opportunity to establish his entrance point. He knew where he had to level off and he knew where the cut terminated.

Q. While you were there on the property was some equipment moved onto the property to do that work?

A. Yes, that is right.

Q. And what did that consist of?

A. That consisted of a D-8 bulldozer, a carry-all, and incidental oiling and repair equipment.

Q. Now, the carry-all had a blade on it how wide?

A. Ten feet 8 inches in width.

(Testimony of William E. Wilson)

Q. For how many days was the bulldozer and carry-all of the property doing the work involved?

A. Five days continuously.

Q. Were you there all during the time that work was being done? A. At all times.

Q. With that equipment? A. Yes.

Q. Will you point out to us on the map the sequence in [346] which the cuts were made on the claims, and when you are describing the sequence in which those cuts were made will you describe the two quarter sections which were involved in the particular cut?

A. Yes, I will. The first cut was made here. That would be the Northeast Quarter of Section 28 and the Northwest Quarter of Section 28.

Q. Now, before you proceed further will you place on Plaintiffs' Exhibit 1 at approximately the point where that cut was made, a figure representing the way the cut existed after it was completed?

Mr. Painter: Does somebody have a colored pencil?

Mr. Hedges: Here are some different colors.

Mr. Painter: Let us get a different color.

The Witness: This map has been carefully prepared and it is to scale and I don't want to mutilate it. I don't have my own scale so I will just put on—

Q. By Mr. Painter: Without trying to put it on to scale give us as best you can, approximately, where the cuts were located and how they appeared?

A. All right. Shall I go through and put them all on?

Q. No, let us start in and mark them as you are going through. A. All right. [347]

Q. Will you mark that with a— A. No. 1.

(Testimony of William E. Wilson)

Q. No, wait just a minute, please. Will you mark it with the letter "E" in the center of the diagram? Now, the cut that you have endeavored to delineate on Plaintiffs' Exhibit 1 is found in which quarter sections?

A. Found in the Northeast Quarter Section of Section 28 and the Northwest Quarter Section of Section 28.

Q. All right, now will you place on the map the next one which was made and mark it with the letter "F"?

A. That is the order in which they were made?

Q. Right, sir.

A. All right. And what symbol, please.

Q. The letter F, please, and describe which quarter sections were involved.

A. That was made in the Southeast Quarter—Southwest Quarter, I beg your pardon, of Section 21 and in the Southeast Quarter of Section 21. That is excavation "F." And what symbol, please?

Q. Will you put the letter "G" there and then describe for us the quarter sections involved in the delineation of "G"?

A. Yes, the excavation "G" was for the benefit of the Northeast Quarter of Section 21 and the Northwest Quarter of Section 21. And what symbol, please? [348]

Q. "H." Now, will you describe for us the quarter sections involved in the delineation of the symbol covered by "H"?

A. The symbol covered by "H" was discovery work for the benefit of the Southeast Quarter of Section 28 and the Southwest Quarter of Section 28.

Q. Now, will you give us the next place where a pit was dug? A. And what symbol, please?

(Testimony of William E. Wilson)

Q. "I." Now, what quarter sections were involved with "I"?

A. "I" was the discovery work for the Northwest Quarter of Section 29 and the Northeast Quarter of Section 29.

Q. Will you place in that the latter "J." Now, what quarter sections were involved in the figure "J"?

A. The figure "J" covered the exploration work for the Southeast Quarter of Section 20 and the Southwest Quarter of Section 20.

Q. Mark that with "K," please. And what quarter sections were involved in the figure "K"?

A. The quarter section of the Northeast Quarter of Section 20 and the Northwest Quarter of Section 20 were involved in the discovery work of the symbol "K."

Q. And make the next one, please?

A. I beg your pardon? Is the letter "L"? [349]

Q. Yes, mark it with the letter "L." Now, what quarter sections were involved in the figure "L"?

A. "L" involved the Northeast, or, the Southeast Quarter of Section 29 and the Southwest Quarter of Section 29.

Q. Will you give us the appearance of each one of those cuts after the cut had been completed—by the way, while you are doing that, unless there is some consideration in the dimensions of any one cut, will you give us the dimensions of the cut when you have finished a description of it?

A. Yes. There was very little variation in the cuts but I will give them as we go along. May I use my glasses and step down, please?

(Testimony of William E. Wilson)

Q. Yes. Will you describe the cut when you are mentioning it by the symbol which describes it?

A. Yes, I will. In laying out these cuts I thought it desirable to put part of them on the high land and part of them on the low land for the purpose of discovery. That we can discuss later.

Beginning at "E" the cut "E" is placed on the high land from the desert floor. There were two or three feet of unconsolidated sands and gravel of overburden and as we passed into the successive passes with the bulldozer and carry-all, deepening this cut, we cut into a hard clay sur- [350] face that is intermittent with inclusions of unconsolidated sand and gravel. As we got down below seven feet in the cut "E" we found that this clay substance had become so hard that it was impossible to cut it and we abandoned further depth in this cut. We had no apparatus on the carry-all beyond the blade, but we did load the carry-all so it was stalled in the cut and then using first one track and then the other on the D-8, weighing about 20 tons, we dug down one side and then the other in an attempt to cut this clay as far as possible but it seemed to be sound and we couldn't cut it. This cut, therefore, has a depth of seven feet, 120 feet long with a 30-foot approach and a 30-foot ramp allowing the carry-all to pass out.

Q. Now, will you describe for us the dimensions of those two ramps and the dimensions of the balance of the cut exclusive of the ramps, giving us the dimensions of each one of those particular portions of the cut?

A. All right. Taking a minimum depth of this cut at six feet, that would be two yards in depth, a minimum width of 12 feet would be four yards in width. That

(Testimony of William E. Wilson)

would be eight yards and 120 feet would be four yards in length. That would be 320 yards. The ramps tapered from zero to six feet. They were 30 feet in length.

Q. That is each ramp?

A. That is right, so that we considered the two ramps [351] together represent an area that was 10 yards long, two yards in depth and four yards wide. Two times four would be eight, and 10 would be 80. 320. That would be 400 yards of excavated material from cut "E."

Q. That is 400 cubic yards? A. That is right.

Q. Now, what was done with the dirt and clay which was moved from the cut after the carry-all took it out of the cut?

A. Part of my assignment there was to determine the location of clay that was not visible except in eroded form in the desert, and in order that Mr. Wallace and his associates could examine the product of these holes as the carry-all emerged, it circled and dumped its load in successive concentric or half concentric rings so that the excavation from the beginning of the cut and from the second and third pass and fourth pass and so on to produce a result analogous to core drilling there so it could be seen by looking at the bottom of the cut the successive layers and the included material in the cut.

Q. All right. Now, have you given us the dimensions of that cut at "E"? A. That is right.

Q. Now, will you give us the dimensions of cut "G," without describing the operation at that point? [352]

A. All right, cut "G"—

(Testimony of William E. Wilson)

Q. After it was completed?

A. After completion it was 120 feet exclusive of the ramps which were 30 feet in an approach and 30 feet in discharge.

Q. And the width?

A. A minimum of six feet in depth and a width of 12 feet.

Q. And the cubic yardage of dirt?

A. 400 cubic yards removed.

Q. Approximately 400 cubic yards or over?

A. That is right.

Q. Now, was the method used in each one of these cuts as to the spreading of the material the same?

A. Identical.

Q. Now, will you give us the dimensions of the cut, discovery "F"?

A. The dimensions at the cut "F" were a 30-foot approach, a 30-foot discharge, and 120 feet of excavation on the bottom. That would be a minimum of six feet in depth and a minimum of 12 feet in width, and it would contain with the ramp and discharge 400 feet, approximately, of excavated material.

Q. Do the same thing for us on location "H."

A. On "H," this cut. There was 30 feet of approach, [353] 30 feet of discharge. 120 feet of excavation. A minimum of six feet in depth. A minimum of 12 feet in width and approximately 400 cubic yards of material removed.

Q. I believe on "F" you said 400 cubic feet. Was that cubic feet or cubic yards?

A. I want to correct that. It would be 400 cubic yards.

(Testimony of William E. Wilson)

Q. In each instance where you are referring to the cubic contents it is cubic yards you are referring to?

A. Always cubic yards.

Q. Now, do the same thing for us with reference to "I."

A. "I" is one of the conventional cuts, 30 feet of approach, 30 feet of discharge. 120 feet of excavation on the bottom, but with this difference at "I." On the westerly end of the cut, the last 20 feet of the excavation, it was excavated to a depth of 12 feet in that particular instance, the greatest depth that was attained at any point in the desert by us.

Q. And what was the total cubic yardage?

A. The total cubic yardage excavated from that particular hole was 430 cubic yards, approximately.

Q. Now, do the same thing for us on "J."

A. All right.

Q. Just one second. Maybe we can shorten this. Was [354] there any difference as far as cubic yardage removed and method of operation on J, K, and L than on, we will say, E?

A. None, on J, on K. On K excavation was made in the stream bed to determine whether or not the clays there were deposited by erosion or whether it was in point of fact clay in place that was being eroded. I found clay in place being eroded and it was so hard here I could only attain a depth of four feet and consequently in order to accommodate the additional yardage I ran the cut from 120 feet to 180 feet in length and approximately 400 yards of excavated material. The same would be true of cut "L," as was true of cut "K," because both of those cuts were made where clay was exposed.

(Testimony of William E. Wilson)

The Court: Does the clay run throughout the entire area or is it spotty?

The Witness: No, Judge, it is continuous throughout the entire area—a narrow area of about 40 square miles in there. The quality of the clay varies. A mile west it might be coarser and so forth. That was the real difficulty.

The Court: Is there any difference in the overburden?

The Witness: No, none.

The Court: It is the same?

The Witness: The same. [355]

The Court: So in any excavating work you do you get some clay, depending on the quality?

The Witness: Exactly.

Q. By Mr. Painter: Now, after these cuts were completed did you examine each cut individually, personally?

A. During the time that it was being excavated. That was the most important mission I had—examine the possible clay content of those found among other things.

Q. And did you find the clay content had an appearance substantially the same in each cut?

A. In each cut, yes.

Q. Except where you noted the fact that it got so hard that you could not use a carry-all method any further? A. That is right.

Q. Now, after these cuts were completed did you examine the cuts to determine whether or not the cuts were evenly divided as between the quarter sections?

A. I did in the original division of the ground. My center line stakes were there and probably still are. They were not disturbed at any time through the course of the

(Testimony of William E. Wilson)

operation. It was necessary to have that guide stake so that when the operator came in he dropped his blade at a particular point and came out at a particular point. The ramp approach, the approach of the leveling off, the center line of the cut, was all staked and it was made clear to the [356] driver that there could be no variation from the division of the cuts in relation to that center line.

Q. What I mean is, when they got through with the cuts did you examine the cuts to determine whether or not those directions had been followed?

A. I was personally present when every cut was made, not only to examine the stakes but to be sure that they were not moved.

Q. Mr. Wilson, what in your opinion was the reasonable value or worth of moving the earth which was moved out of each one of these cuts in November of 1945, basing it on a price per cubic yard?

Mr. Hedges: Objected to as irrelevant, incompetent and immaterial. The only thing that is material is what actually was spent in connection with the development work.

Mr. Painter: That isn't what the statute says.

The Court: I think I will overrule the objection. I believe it is material to the question of the value of the rights involved. I realize you stipulated to value but we may have to have some proof in the record.

The Witness: In my opinion, the earth-moving operation there is worth \$1.50 a yard.

Q. By Mr. Painter: Were you familiar with the going rate for day labor in that locality at that time?

A. I knew in general that day labor was worth \$1.00 a [357] day—beg your pardon, \$1.00 an hour for eight

(Testimony of William E. Wilson)

hours. I believe that was the prevailing price for farm labor and pick and shovel labor in the area.

Q. By Mr. Painter: Mr. Wilson, while you were making your examination on the property around the 4th of November and between that date and the 11th, did you observe any notices of location of any character posted on the property? A. (No answer.)

Q. I will shorten that somewhat, I assume, by telling you I am talking now about the ones which were found posted on a board and the stake driven into the ground. Will you just answer that yes or no first, please?

A. Yes.

Q. Now, will you point out to me the points at which you observed those notices posted which I have just referred to? A. I found four posted here.

Q. That is at point "B"?

A. Point B. Four posted here at point "D." I found two posted in the area here of our symbol "K." Two posted in the area here near our symbol "G." Two posted in the area here near symbol "H," and two posted in the area here near symbol "L."

Q. Did you examine each one of those claims of notice of location? [358] A. I did.

Q. And while examining the notice of location did you note whether or not the notice of location which you examined on each one of those claims contained correct description of the quarter section of the property involved?

A. Yes, I did.

Q. And did you note whether or not while making that examination that that particular claim containing a description of the quarter section was located on the quarter section involved? A. I did.

(Testimony of William E. Wilson)

Q. And while examining that claim did you note whether or not any names appeared on each one of those claims at the bottom of the claim?

A. It is my recollection that there were eight such names.

Q. And do you recall any of those names which you observed at that time?

A. Well, now, let me see. Most of the people were unknown to me, but I remember—I recall J. C. Bergere and A. L. Bergere, Mr. Harris Hammond, Edna M. Wallace, Willard W. Wallace, and two other persons—a man and wife who were unknown to me.

Q. You may resume the stand. That is all. [359]

Cross Examination

By Mr. Hedges:

Q. Mr. Wilson, you said you made the arrangements for having this D-8 bulldozer and carry-all come out to the property, is that correct? A. Yes, sir.

Q. And you gave me the man's name that owned the bulldozer. I have forgotten it now.

A. Mr. Rex Igle.

Q. Was he the operator of the bulldozer that performed the work?

A. Yes, he owned and operated it.

Q. What rate did he charge for the use of the bulldozer and his services?

Mr. Painter: Object to that as not proper cross examination. It is irrelevant and immaterial.

The Court: I don't think he testified to costs except merely the reasonable value.

(Testimony of William E. Wilson)

Mr. Hedges: But he testified to the value of moving this dirt at a dollar and a half a yard and it must be based upon what the bulldozer cost.

Mr. Painter: Not what the bulldozer cost.

Mr. Hedges: The rate for its use.

The Court: I will sustain the objection.

Q. By Mr. Hedges: Upon what do you base your opinion [360] that it cost \$1.50 a yard to move the dirt in this area, Mr. Wilson?

A. There were two bases. After you have moved dirt in an area and you know precisely what the costs are you would be in a better position to estimate than before, but in an area where the composition of the soil is unknown and where you are so far from transportation as you were there, sixteen and a half miles from Brawley, if I had gone on the property as a contractor, in the area, I would have undertaken the task of moving the amount of dirt that was moved here, very small in point of fact, for \$1.50 a yard. There would have been a reasonable profit margin in that. I was asked what in my opinion, was the worth of moving that dirt.

Q. Yes, and I am asking you upon what you based that.

A. That is what I based it upon, the isolation of the area, the unknown obstacles that might be involved, and so forth.

Q. Well, you would take into consideration the cost of the use of the bulldozer and the cost of the labor necessary to operate it, would you not?

A. That is right. Hand labor in that area, for example, a man, a good man with a shovel will move approximately three yards of material in an 8-hour day

(Testimony of William E. Wilson)

and that would run right close to \$3.00 a yard on that basis, on the hand basis. [361]

Q. Isn't it a fact that a man and a bulldozer can move the quantity of material that you testified to here for 50 cents a yard?

A. That is true under certain conditions.

Q. Is it not true at this particular location?

A. I think that it could be done.

Q. You don't know whether or not it was done for that price?

A. I don't know because I didn't handle those transactions.

Q. You did not handle the payment?

A. No, that is right.

Mr. Hedges: That is all.

Q. By Mr. Wood: Mr. Wilson, did Mr. Igle do this pursuant to a contract?

Mr. Painter: Object to that as not proper cross examination.

The Court: Objection sustained. This man does not know about that. He is merely the engineer who laid out the work to be done.

Q. By Mr. Wood: Did you survey the holes that were dug after the job was completed, Mr. Wilson?

A. No, my survey determined the location of these pits in the beginning and it was the first work that was done and after the survey was completed and the stakes were [362] driven then Mr. Igle and his driver were taken to the location and started on the work. I stayed there throughout the development of the work and didn't at any time allow the center line to be moved or disturbed.

(Testimony of William E. Wilson)

Q. And were there any other men working there besides Mr. Igle and his driver?

A. There was no other men working on the project besides Mr. Igle and his driver.

Q. After the work was completed by Mr. Igle and his driver, you did not measure it up?

A. Oh, yes, I measured it continuously because I was following the carry-all and the bulldozer through the cut, continuously observing the formation and stopping the depth when it had attained the proper depth. I would be at all times measuring as the work progressed.

Q. Did you have notes of those measurements?

A. Pardon me?

Q. Did you make notes of the measurements?

A. I made notes of them at the time. I don't have them with me now.

Q. What did you do with them?

A. My notes are in a field book that is in evidence in a lawsuit between Colonel E. A. Willsey and Mr. J. T. Boyd, an engineer, a mining engineer from Old Mexico that was tried before the Superior Court in San Francisco on [363] September 20th, 1946, and they are in evidence there and I couldn't get them out to bring them south.

Q. When did you last review those notes?

A. I haven't reviewed those notes since I left the desert.

Mr. Wood: That is all.

The Court: We will take a short recess, gentlemen, before you call your next witness.

(Short recess.)

The Court: You may proceed.

WILLARD W. WALLACE,

called as a witness by and on behalf of the defendants, having been previously duly sworn, was recalled and testified further as follows:

Direct Examination

By Mr. Painter:

Q. At this time may the record show I am recalling Willard Wallace?

The Court: All right.

Mr. Painter: At this time, if your Honor please, I wish to introduce in evidence Defendants' Exhibits A to P, both inclusive, which have heretofore been marked for identification.

Mr. Hedges: To which we object, if your Honor please, upon the ground that they are absolutely void under the [364] provisions of Section 2313 of the Public Resources Code in that they do not carry on the reverse side—the first point is they are on a Colorado form and secondly, they do not conform to the statute which requires that there must be a statement on the back of the markings and the boundaries and the performance of the required discovery work, or the discovery work must be filed—another statement must be filed concurrently with the filing of the notice.

Mr. Painter: It isn't for that purpose I am introducing them, your Honor. The purpose I am introducing them for is in my chain to show that the notices posted on the property were in form, the same as those exhibits

(Testimony of Willard W. Wallace)

we have heretofore had the testimony of the witnesses as to contents of this and the other group of 16 which were posted on the property, and this is simply to have in evidence something which is a duplicate of notices which were on the property. A notice alone is not effective.

I am following that up with another series of exhibits which were filed.

Mr. Hedges: One further objection, if I might make it at this time, your Honor, and that is they show on the face that they were recorded at 10:00 o'clock a.m. on the 7th of September, which was prior in time to the actual location of the claims on the property.

Mr. Painter: I just got through saying, your Honor, I [365] was not asking them to be introduced in evidence for the purpose of showing that we complied with any statute, other than that we have in evidence a duplicate of that which was posted on the property for which we have the oral testimony of the witnesses.

The Court: If they are offered for that purpose and not as proper location certificates, properly recorded, in conformity with the statute, I think I will overrule the objection.

The Clerk: Defendants' Exhibits A to P, inclusive, are received in evidence.

(The documents previously marked as Defendants' Exhibits A to P, inclusive, were received in evidence.)

[DEFENDANTS' EXHIBIT A]

LOCATION CERTIFICATE
Placer Claim

Know All Men By These Presents, That We, the undersigned citizens of the United States, having complied with the provisions of Chapter 6, Title XXXII, of the Revised Statutes of the United States, and with the local customs, laws and regulations, claim by right of discovery and location, as a placer claim, the following described premises, situate, lying and being in Unorganized Mining District, County of Imperial, and State of California, to wit:

The Gunnison No. 2 Placer Claim, being the Northwest $\frac{1}{4}$, Section 20, Township 14 South, Range 12 East, S.B.B.M. consisting of 160 Acres.

Discovered and located September 7th 1945.

Attest:

| | |
|--------------------|------------------|
| Harris Hammond | Edna M. Wallace |
| A. L. Bergere | James P. Delaney |
| J. C. Bergere | Mary J. Delaney |
| Willard W. Wallace | Irvin S. Barthel |

When recorded, please mail this Instrument to
J. C. Bergere
208 W. 8th St., Rm. 405
Los Angeles, California

Recorded Sep 7 - 1945 10 A. M. in Book 624 Page
204 Official Records Imperial County, Calif.

At Request of

| | | |
|----------------|----------------|--------------|
| Grantee..... | Grantor..... | Trustee..... |
| Mortgagee..... | Mortgagor..... | |
| J. C. Bergere | | |

(Defendants' Exhibit A)

Sheriff..... Attorney..... Locator.....

Evalyn B. Westerfield, County Recorder By Vera
Rogers Deputy

I certify that I have correctly transcribed this document in above mentioned book. K. Carter Copyist

\$1.00 Indexed Compared Book & Paged

Case No. 6105-Y Civ. Hattie M. Houck vs. J. A. Jose et al. Deft. Exhibit A. Date Jun. 4, 1947. No. A Identification. Date Jun. 5, 1947. No. A in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.

[Clerk's Note: Counsel stipulate Exhibits B-P, inclusive, are similar to Exhibit A, save and except as hereinafter set forth:

Each of said Notices of Location contain the name of the claim involved, its correct legal description, and the book and page in which said Notice of Location was recorded in the Office of the County Recorder of Imperial County, California. No statement of assessment work done is contained in either of said Notices of Location.]

The Court: They are limited to the purpose indicated.

Q. By Mr. Painter: Mr. Wallace, I am handing you 16 pieces of paper and ask you if you have ever seen those before? A. I have.

Q. And were those prepared by you?

A. They were.

Q. Are the signatures which appear on each one of those claims in the handwriting of the defendants Hammond, et al.? A. Yes, they are. [366]

(Testimony of Willard W. Wallace)

Q. From what source did you get the information contained on each one of those pieces of paper, commencing with the word "Statement" and ending with the figures "1945"? A. From Mr. Wilson.

Q. That is Mr. Wilson who testified here on the stand? A. That is right.

Mr. Painter: At this time I offer in evidence these 16 amended notices of location of placer claims as Defendant Hammond et al. exhibits next in order.

Mr. Hedges: To which we object on the ground the instruments are incompetent, irrelevant and immaterial for the reason that they are intervening claims that have been filed between the time of the original location notice and the time of the filing of this amended claim.

The Court: Gentlemen, I will have to determine the validity of the conflicting claims here. Some of them depend upon time and I believe so long as I am hearing the matter on its merits I think it best to have them before me and then determine their legal effect later on.

The Code provides that the recordation of the notice may be within 90 days after the posting of the notice, so it is a question of law to determine what effect an intervening right has. If a man has 90 days after posting the question arises whether a man can deprive him of that right by running in and recording an instrument within the [367] 90-day period.

Mr. Hedges: I think the question, your Honor, is whether or not this being entitled an amended notice, whether or not it would revert back to the time of the filing of their first notice on the 7th, which it would, unless there were intervening rights which are the circumstances here.

(Testimony of Willard W. Wallace)

The Court: Well, I will overrule the objection. They may be received and given the proper numbers.

The Clerk: These are admitted as Exhibits No. 1 to 16.

Mr. Wood: No, there is no use running the numbers up.

Mr. Painter: One number as far as I am concerned is all right.

The Court: Have you given them numbers yet?

The Clerk: No.

The Court: Make them one number.

The Clerk: Then that is Defendants' Exhibit KK in evidence.

(The documents referred to were marked as Defendants' Exhibit KK, and was received in evidence.)

[DEFENDANTS' EXHIBIT KK]

AMENDED NOTICE OF LOCATION OF PLACER CLAIM

Know All Men By These Presents, That We, the undersigned citizens of the United States, having complied with the provisions of Chapter 6, Title XXXII, of the Revised Statutes of the United States, and with the local customs, laws and regulations, claim by right of discovery and location, as a Placer Claim, the following described premises, situate, lying and being in Unorganized Mining District, County of Imperial, and State of California, to-wit:

The Gunnison No. 1, Placer Claim, being the Northeast $\frac{1}{4}$, Section 20, Township 14 South, Range 12 East, S.B.B.M. consisting of 160 Acres. Located September 7,

(Defendants' Exhibit KK)

1945. The date of the discovery and posting of the original notice of location is September 7, 1945.

STATEMENT OF MARKINGS AND BOUNDARIES

The markings of the boundaries of the aforesaid claim have been dispensed with since the claim has been located and described by legal subdivisions conforming to the United States General Land Office Survey of 1912.

STATEMENT OF DISCOVERY WORK PERFORMED

The Locators have performed all discovery work required by the laws of the United States and the State of California particularly Section 2305 of the Public Resources Code of the State of California by open cut work from which cut there has been removed more than 60 cubic yards of material and performing thereby at least One Dollar's (\$1.00) worth of work for each acre included in the claim.

The discovery work indicated *avoce* has been completed within 90 days from the date of location of said claim, namely: before 5 o'clock P.M. November 10, 1945.

Attest:

Harris Hammond

Edna M. Wallace

A. L. Bergere

James P. Delaney

J. C. Bergere

Mary J. Delaney

Willard W. Wallace

Irvin S. Barthel

J. C. Bergere

724 South Spring Street

Suite 515

Los Angeles 14, Calif.

(Defendants' Exhibit KK)

Recorded Nov 24, 1945 9 A.M. in Book 624 Page 237 Official Records Imperial County, Calif.

At Request of

Grantee..... Grantor..... Trustee.....

Mortgagee..... Mortgagor.....

J. C. Bergere

Sheriff..... Attorney..... Locator.....

Evalyn B. Westerfield, County Recorder By Vera Rogers Deputy

I certify that I have correctly transcribed this document in above mentioned book. Jo Stevens Copyist

\$1.00 Indexed Compared

Case No. 6105-Y Civ. Hattie M. Houck vs. J. A. Jose et al. Defts. Exhibit KK. Date Jun 5, 1947. No. KK in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.

[Clerk's Note: Counsel stipulate that each of said pages of said Exhibit KK shall be considered duplicates of the first page of said Exhibit, save and except as hereinafter set forth:

Each of said Amended Notices of Location contain the name of the claim involved, its correct legal description, and the book and page in which said Notice of Location was recorded in the Office of the County Recorded of Imperial County, California.]

Mr. Painter: That is all of Mr. Wallace.

Mr. Hedges: No cross examination.

Mr. Wood: No cross examination.

The Court: Call your next witness.

Mr. Painter: Mr. Hammond. [368]

HARRIS HAMMOND,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Harris Hammond.

Direct Examination

By Mr. Painter:

Q. Mr. Hammond, where do you reside?

A. Los Angeles.

Q. Are you acquainted with Mr. Lewis here in the courtroom? A. Yes.

Q. When did you first meet him?

A. In the spring of 1942.

Q. As a result of that meeting in the spring of 1942 were certain instruments drawn with reference to the property involved in this matter?

A. Yes, there were.

Q. I am going to show you what purports to be a lease between Ella Jackman, et al. and Stanley Houck as trustee, under date of September 12th, 1942, and ask you after examining that instrument, if you could tell me approximately how many weeks prior to the date of that instrument was it that you first met Mr. Lewis? [369]

A. I would say about four months.

Q. Now, where did you first meet Mr. Lewis?

A. In my office at the Union Oil Building.

Q. Did you have any conversation with Mr. Lewis at that time in which there was any discussion as to the property involved in this action? Just answer that yes or no. A. Yes.

(Testimony of Harris Hammond)

Q. Did you have more than one discussion with Mr. Lewis in relation to that same subject between the date of your first meeting and this date, September 12th, 1942?

A. Yes, we had quite a few.

Q. Now, will you give me the substance of the first discussion which you and Mr. Lewis had in relation to this property?

Mr. Hedges: Just a minute. I cannot see the materiality of this line of examination if your Honor please, and object to it upon that ground. If counsel will disclose what he has in mind perhaps I can withdraw the objection.

Mr. Painter: I assume it would be proper at this time if the court desires me to do so.

The Court: Surely.

Mr. Painter: At this time, if your Honor please, I am going to endeavor to prove that in the late spring of 1942 or early summer of 1942, Mr. Hammond was approached by Mr. [370] Lewis and was advised by Mr. Lewis, in substance, that he, Mr. Lewis, had an option to obtain a lease on this property from a Mr. Jose; that as a result of that conference he interested Mr. Hammond in going forward with the transaction by which he and Mr. Lewis were to acquire such a leasehold interest; that he represented to Mr. Hammond at that time that Mr. Jose and others associated with him, were the owner of mining claims on this property and that the property contained valuable mineral deposits. That subsequent thereto and through the offices of Mr. Lewis, Mr. Lewis introduced to Mr. Hammond an attorney from Minneapolis by the name of Stanley B. Houck; that after conferences between Stanley B. Houck, Mr.

Lewis and Mr. Hammond, the three parties entered into an agreement under which Mr. Houck was to obtain, through the option which Mr. Lewis had, a lease on the property here involved, the lessee to be Stanley Houck as trustee for the benefit of Mr. Lewis, Mr. Hammond and Mr. Houck.

That at that time Mr. Hammond employed Mr. Houck as his attorney to represent him in the transaction, first for the purpose of securing a valid lease on the property from the proper parties and that a part of his consideration was the conveyance to him by Mr. Lewis and Mr. Hammond a two and a half per cent interest in this lease which was to be obtained.

That subsequent thereto Mr. Houck took in his name [371] such a lease under the date of September 12th, 1942. That Mr. Hammond was at a later date advised by Mr. Stanley B. Houck, who, by the way, is the plaintiff Stanley B. Houck in this action, that he, Mr. Houck, had found that there were defects in the title.

Mr. Houck's opinion as an attorney, was that a new lease should be drawn—first, that there was—a modification should be drawn and later that a new lease should be drawn and that the names of the lessors be obtained to the lease whom, in Mr. Houck's opinion, it was necessary to have on the lease to make it a valid lease.

Such a lease was obtained under date of December 1, 1942. That this new lease was obtained in the first of February or first of December, 1942, and was obtained in the name of Mr. Houck as trustee for the benefit of Mr. Hammond, Mr. Lewis, and himself.

That subsequent thereto, through the advise and counsel of Mr. Houck, Mr. and Mrs. Hammond entered into a trust agreement in which Mr. Houck was named as

the trustee, conveying to him as trustee for the benefit of certain of the kin of Mr. and Mrs. Hammond, a two and a half per cent interest in the lease in addition to the one in the agreement which he was to have the benefit of.

That subsequent thereto and through the counsel of Mr. Houck as attorney for Mr. Hammond, he prepared a [372] declaration of the trust under which he was holding this property and that declaration was signed by Mr. Houck as the trustee and individually by Mr. Lewis and by Mr. Hammond.

That in that trust the division of the interests in the leasehold created by the lease from Jose, et al. to Houck as trustee, were divided between Mr. Hammond 45 per cent, Mr. Lewis 45 per cent, and Mr. Houck and his wife, two and a half per cent each.

That as of the date Mr. Houck endeavored to post claims on this property that trust was still in existence and that the relationship of attorney and client had never been terminated in connection with this matter.

Now, the whole theory back of that, if your Honor please, is the theory that Mr. Houck, acting as trustee and as an attorney, had created a confidential relationship, fiduciary relationship between himself and Mr. Hammond, and that he could not and cannot come into this court and endeavor to take advantage of a deficiency in the interests which he, Mr. Houck, was duty-bound to obtain for Mr. Hammond.

I will further show that pursuant to the advise and counsel of Mr. Houck and relying upon the representations that he was representing himself as an attorney, Mr. Hammond expended out of his own personal funds in excess of \$25,000 for the development of this project. [373]

That is the theory back of this evidence.

Mr. Hedges: To which we object, if your Honor please, upon the ground it is wholly incompetent, irrelevant and immaterial. It is too remote. It is not within any of the issues of this case. It has not been raised as a defense. Has no bearing on the issues involved here at all. It is ancient history that Mr. Painter is talking about. This case starts as of the 6th of September, 1945. He is talking away back in 1942 sometime and no issue of that is raised in any of the pleadings.

The Court: Mr. Wood, have you any comment?

Mr. Wood: No.

The Court: If that property had been acquired and it had been agreed among the parties that it should be put in the form of a trust and the proceeds divided in a certain manner, I would hold that under the broad terms of an action to quiet title, you can establish almost any interest, but what you are trying to establish here is a breach of a fiduciary relationship ante-dating a claim of title.

You have not filed a cross claim on that basis.

It is too late at the present time to go into a question that would require me to determine whether, in acquiring this property, he broke a fiduciary relation and if he did break a fiduciary relation the proper remedy would be an action for damages. [374]

Mr. Painter: I will elucidate on my theory. The theory upon which this is being introduced is that at any time in an equitable proceeding the court has a right to determine whether a party litigant is coming into court with clean hands.

The Court: But it must be pleaded. What you are trying to do is show a breach of fiduciary relations. In the first place, I question whether on unpatented land you can bring suit to quiet title to a mining claim in the

first place. What you are trying to do is quiet title to land that is still in the public domain. You are merely making a claim to it. You cannot acquire a patent for 20 years. All that I would decide is not that you have title to the lands but that you have a prior claim. That is about all I decide in a mining claim, because at any time you fail to do your assessment work you forfeit your right and anybody may go in and re-enter on the land and your locations mean very little.

We are not dealing here with a fee simple title in anybody. You are dealing with what we know as a typical mining gamble into which a lot of people enter and I cannot see how the relations of this defendant to the plaintiff, prior thereto, before any claim is asserted here by which he acquired nothing—nobody had any claim in 1942. This land was not open to entry. You could not make a valid [375] contract to it that could be enforced in law because you are merely speculating on when the war would end and the Government would withdraw the interdict and the land put back in circulation.

So, I cannot see, assuming everything you say is true, how that question is before me. It is not pleaded and I doubt if it had been pleaded that I could have entertained it because it purely relates to a speculative venture into which you entered at a time when no rights could be acquired to this property. Not only was it withdrawn but it was preempted and was being used as a part of the desert center, I think it was called.

Mr. Wood: A firing range.

The Court: A firing range.

Your contract does not relate to any of the rights which any of you three now assert. Each of you three

groups assert rights under placer claims made the moment the withdrawal notice became effective, 63 days after July 6th.

Mr. Painter: Of course I went on the premise, if your Honor please, this was an equitable proceeding. Maybe I am in error.

The Court: To some extent a suit to quiet title is an equity proceeding, but you cannot thresh out anything but the question of title. You cannot thresh out damage suits with relation to property as to which no one had any rights in [376] 1942. You couldn't acquire any rights to this property then.

Merely because you knew it was there didn't give you a right to speculate about it. If you did and you made a trust as to property which you had no title to, it is outside of the province of this case.

Furthermore, assuming it had been it should have been pleaded. A defense like this isn't a defense of clean hands. This is what you are trying to do, make him a trustee—

Mr. Painter: No, I am not, your Honor. That is not the purpose of the introduction of this evidence. The purpose of the introduction of this evidence is simply in support of the theory that the court in an equitable proceeding will not let one who is a trustee and stands in a confidential relationship with one of the parties, take advantage of a wrong which he has created himself to his own advantage, and he is not coming into court with clean hands and asserting a right against Mr. Hammond which is founded in justice and equity.

The Court: I do not think it is an issue in an ordinary suit to quiet title, especially in a suit of this character which relates to mining property, as to which only provisional rights are acquired by anybody.

It should have been pleaded before this. It is too [377] late to bring it up at the present time.

Furthermore, assuming it had been pleaded, I doubt if I could entertain it because no rights could have been acquired by anybody as to this land while it was a part of the public domain and was withdrawn from entry and in the hands of the War Department. For that reason there is no equity matter before the court.

Mr. Painter: I will submit to your Honor's opinion and question Mr. Hammond no further.

The Court: All right.

Mr. Hedges: No questions.

The Court: The objection is sustained.

Mr. Painter: May we have just one minute, your Honor? I think we are ready to rest.

The Court: All right.

Mr. Painter: That is our last witness, your Honor. Might we have this understanding, however? I would like to consider further this last point that I made. I am quite sure I have presented all the points to your Honor.

The Court: Have you additional testimony, Mr. Wood?

Mr. Wood: Yes, your Honor, I have three more witnesses.

The Court: All right, call your next witness. [378]

WAYNE HODGSON,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Mr. Wood: If your Honor please, at the adjournment of court at noon Mr. Hodgson came to me and told me that he wanted to re-take the witness stand; that he had listened to some of the testimony that had been given here and that he felt he owed an obligation to this court to come in and tell the court what he knew about the facts. I told him if he remained over that I would put him on the witness stand.

The Court: Well, I cannot allow him to go on indefinitely telling what he knows. You will have to ask him questions relating to any matter that he either testified to or any matters by other witnesses.

Mr. Wood: I will put the questions, but he wanted me to explain why he wanted to come back.

The Court: That is all right.

Mr. Hedges: Are you calling him as your own witness, Mr. Wood?

Mr. Wood: I am.

Direct Examination

By Mr. Wood:

Q. Mr. Hodgson, you were employed as you testified in this case, by Mr. Lewis in connection with some work on [379] the property in question?

A. That is right.

Q. And when were you first employed by Mr. Lewis?

A. I believe I was first employed by Mr. Lewis on the morning of September 6th, 1945.

(Testimony of Wayne Hodgson)

Q. Now, after the location work was done, that is the location notices were posted on the 6th and 7th of September, 1945, were you again employed by Mr. Lewis?

A. That is correct.

Q. And when was that, Mr. Hodgson?

A. That was in the month in question, in November, I believe.

Q. In November of 1945?

A. I believe that is correct, yes.

Q. And where did that employment take place?

A. He came to my home.

Q. And that is in Imperial?

A. Imperial, California.

Q. And you had a conversation with him at that time? A. Yes.

Q. Who was present?

A. My family—my mother and my father and I believe my brother.

Q. What was that conversation—what was said?

A. The text of the conversation was that he would give [380] me a certain sum of money to hire a certain sum of boys around 12, to go out onto said property in question and dig two holes amounting to excavation and assessment work on said quarter sections.

Q. How much money did he say he would give you?

A. At that time he said he would give me \$50.00 for that one day. However, it was my understanding—it was the understanding of my folks—I thought it was an exorbitant price.

Mr. Hedges: We object to what he thought and what his folks thought and move it be stricken.

(Testimony of Wayne Hodgson)

The Witness: He said he would give me \$50.00 to go out on the desert and dig a hole.

Q. By Mr. Wood: What did you do after that with respect to this particular project?

A. I hired 12 boys.

Q. You hired the boys?

A. I engaged them. I didn't exactly hire them. I acquired them and they were under the employ of myself and Mr. Lewis.

Q. And you went out on the desert?

A. That is correct.

Q. Now, did you dig a hole with those boys out there?

A. I did.

Q. On what quarter section was that? [381]

A. That was on—if I may step down, please?

The Court: Yes, go ahead.

A. That was on Torrid No. 1 and Temperate No. 2.

Q. By Mr. Wood: Which hole was dug first?

A. They were both started on Saturday. I split the boys up. One worked on Torrid No. 1. That was one bunch of boys which amounted to six boys. I am fairly sure of that—five or six. Not over six and not under five.

And then I took the other six boys and took them down to Temperate No. 2 and there we worked Saturday for nine and one-half hours, I believe.

Mr. Hedges: If your Honor please, I haven't the slightest idea what Mr. Wood is attempting to develop here, but this witness is testifying to things that he testified to yesterday and it seems to me to be strictly repetitious.

The Court: As to dates he already testified to this.

(Testimony of Wayne Hodgson)

Mr. Wood: I am leading up to where he wants to make a change, your Honor.

The Court: He wants to make a change? All right, go ahead.

Q. By Mr. Wood: How many days did you work on those two holes, Mr. Hodgson?

A. I worked on those two holes for two days.

Q. And approximately how many hours a day?

A. Nine and one-half. [382]

Q. Each day? A. Each day.

Q. Now, did you do any further work for Mr. Lewis there? A. Not on those two holes.

Q. I mean in any other capacity?

A. Yes. I acted in the capacity of rather a foreman over possibly 30 or 40 Mexicans that were working for Mr. Lewis at that time.

Q. And was that after you had dug these two holes?

A. That is correct.

Q. For how many days were you there with him during that period of time?

A. Approximately three days.

Q. During that period of time did you have any conversations with Mr. Lewis with respect to any of the holes that were being dug?

A. Yes, that were being dug, yes.

Q. Who was present beside you and Mr. Lewis?

A. Myself and the Mexican laborers is all.

Q. What were those conversations?

Mr. Hedges: Just a minute. May we have a little better foundation as to time?

The Court: Yes, let us have some definite idea about dates. [383]

(Testimony of Wayne Hodgson)

Q. By Mr. Wood: Do you remember what dates they were on?

A. Yes. That was a Monday following the Saturday and Sunday that I worked in the latter part of November. These conversations took place during the time Mr. Lewis was doing the assessment work on the property.

The Court: All right.

Q. By Mr. Wood: And what conversations did you have with him?

A. Well, I had various conversations with him pertaining to digging the holes, how long to work on them.

Q. Tell the court what he told you to do and what was said there?

Mr. Hedges: I haven't any objection to the conversations, but I thought you put him on the stand for the purpose of correcting some testimony. I haven't seen any of it yet.

Mr. Wood: I put him on the stand for him to testify as to what he did out there, what conversations he had with Mr. Lewis as to the development work that Mr. Lewis did on this property.

Mr. Hedges: He is your witness.

The Court: I will reserve your motion to strike. I don't know what it is leading to.

The Witness: May I ask a question, your Honor?

The Court: No, I am not answering questions. You want- [384] ed to correct some testimony.

The Witness: I want to correct some testimony in this court that I heard that was false.

Q. By Mr. Wood: You tell what he said to you.

A. All right, he said—

Mr. Hedges: Who are you referring to?

(Testimony of Wayne Hodgson)

The Witness: Mr. Lewis told me in relationship to the holes, especially on Temperate No. 1, on which I worked there for one day with the six boys. We hit hard dirt and his actual conversation to me was this, and I say this in all truthfulness—

The Court: Go ahead; don't give us an explanation.

The Witness: Anyway, he said, "We have hit hard dirt. They will never be able to check how much money we spent here. Call off your boys," and I did.

The Court: All right.

Q. By Mr. Wood: Did you have any further conversations with him with reference to these matters?

A. With that conversation pertaining to several of the holes on the property, but I cannot be specific as to what amount—as to what holes.

The Court: Well, when you struck hard dirt you went on to the others, didn't you?

The Witness: That is correct.

The Court: All right. [385]

Q. By Mr. Wood: Now, were you present at any time when the Mexican laborers were paid off on this property? A. I was.

Q. And when was that?

A. That was in the latter part of November. It was on—I forget exactly what day but I was present at the time they paid the Mexicans off for the whole work—I mean when the Mexicans pulled out and left. I was present when Mr. Lewis settled up his account with them.

Q. Where did that take place?

A. That took place in front of the Safeway Store in Brawley at seven o'clock at night.

(Testimony of Wayne Hodgson)

Q. And how was that handled?

A. That was handled by Mr. Lewis holding a time-book and I believe the money, checking off how much money each Mexican had made and handing me the cash and I in turn handing it to the Mexican.

Mr. Wood: That is all.

Cross-Examination

By Mr. Hedges:

Q. Mr. Hodgson, you did not tell me anything about this yesterday, did you? A. You didn't ask me.

Q. As to what you just testified now?

A. You didn't ask me. [386]

Q. What prompted you all of a sudden to want to testify to these things which you could have testified to yesterday? A. You want me to tell you?

Q. Yes, I am asking you.

A. I will tell you, all right, because I set back there and heard some outlandish lies by a certain person in this courtroom. I knew they were lies. My opinion of this person isn't very high. I mean, he has lied to me constantly, and I thought if there was anything I could do for it—I will say this to you and the court, I cannot be unbiased in this, but what I am saying is the truth and I planned to say it when I come up here.

The Court: All right.

The Witness: And that is what prompted me to say it.

Mr. Hedges: Very well, no further questions, your Honor.

The Court: All right, step down. You have gotten it off your chest. I hope you feel better.

(Testimony of Wayne Hodgson)

The Witness: I do.

Mr. Wood: May I speak to your Honor for just a second off the record?

The Court: Yes.

(Discussion off the record.)

The Court: We will recess at this time until 2:00 [387] o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same day.) [388]

Los Angeles, California, Thursday, June 5, 1947.
2:00 P. M.

The Court: All right, gentlemen, you may proceed.

JOSEPH F. GOLDEN,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Joseph F. Golden.

Direct Examination

By Mr. Wood:

Q. What is your business or occupation?

A. I am a registered civil engineer.

Mr. Painter: If I may interrupt for a moment, the defendants and cross complaints, et al. rest.

The Court: All right, you may proceed, Mr. Wood.

Q. By Mr. Wood: What is your occupation?

A. I am a registered civil engineer.

(Testimony of Joseph F. Golden)

Q. And where is your office?

A. El Centro, California.

Q. How long have you been an engineer in the Imperial Valley? A. 17 years.

Q. Are you familiar with the property—

A. I am. [389]

Q. Described as Sections 20, 21, 28 and 29?

A. I am.

Q. In Township 14? A. I am.

Q. Have you been on that property, Mr. Golden?

A. Yes, I have.

Q. And when were you first on the property?

A. First on the property?

Q. In connection with making a survey?

A. In connection with this case in April, 1946.

Q. And at that time did you make a survey of those four sections? A. I did.

Q. I show you a map, Mr. Golden, which appears to be certified by you, and directing your attention to the upper left-hand corner, was that map made by you?

A. It was made under my direction.

Q. And that represents, in the upper left-hand corner, the four sections here involved?

A. That is correct.

Q. And on the left-hand side the sketch is marked from 1 to 16, inclusive. Can you tell us what that represents?

A. 1 to 17, inclusive. It is sketches showing the extent of excavations that were made by Mr. Bratton and [390] Mr. Sturgis of El Centro that I measured and these sketches are reproductions of the field survey that I made to determine the extent and yardage of these excavations.

(Testimony of Joseph F. Golden)

Q. Now, directing your attention to the square sketches that are on there marked from 1 to 16, what do they represent?

A. Well, they represent my measurements of excavations that were made by others—others than Bratton and Sturgis on these same properties.

Mr. Wood: May we have this marked for identification, your Honor?

The Court: Marked for identification defendants' Exhibits LL.

(The documents referred to were marked as Defendants' Exhibits LL, and were received in evidence.)

Q. By Mr. Wood: Now, in setting out these four sections, Mr. Golden, did you run a survey there?

A. Yes, I did.

Q. And will you tell us what you did in order to arrive at the exterior boundaries of those four sections?

A. Well, most of the original general Land Office corners were still in existence so it wasn't necessary for me to retrace the exterior boundaries of the sections, except in the case of the south line of Section 20, I believe it is, in order to divide the quarter sections. It [391] was necessary to have the south quarter section corner of Section 20, which apparently had been destroyed or removed, so it became necessary for me to re-establish that, which I did, by running a line between the southwest and southeast corner of that section, and determining the distance, and re-establishing the quarter section corner in accordance with law, at a point midway between those two corners and I established as a monument a .50-caliber machine gun barrel at that point and when I had estab-

(Testimony of Joseph F. Golden)

lished that quarter corner, south quarter corner of Section 20, I turned an angle that would, from that quarter corner that would throw me parallel to the east and west lines of that section and measured a half mile due north and south in order to—and I also went through that same procedure on the other two sections, except that it wasn't necessary for me to re-establish any corners there, the original Government corner being in existence.

In effect, what I did was to establish the approximate center of the four sections that are involved so that I could determine whether or not the work that was done in the location of these holes fell wholly within any one quarter section or not. And I ran this survey with sufficient accuracy to satisfy myself that such was the case.

Q. Now, did you find that the holes were in their [392] proper quarter sections?

A. Yes, they were.

Q. That is, both the holes that were dug by Mr. Bratton?

A. Well, the holes that were dug by Mr. Bratton were dug to stakes that I had previously set to insure that they would be on the proper quarter section. In other words, I was there prior to the time that he commenced operations and set stakes to guide him, marking the spot where he was to make his excavation and all of the other holes that I measured are in the proper quarter section that they are referred to on the tabulation shown on that map.

Q. So that the holes that were dug by Mr. Bratton and the other holes marked 1 to 16, were in their proper quarter sections? A. That is correct.

(Testimony of Joseph F. Golden)

Q. Now, when Mr. Bratton finished his work there did you measure the holes that he had dug? A. I did.

Q. And did you calculate the yardage removed?

A. I did.

Q. Now, will you take this point and start with No. 1 hole, telling us what quarter sections they are in, Mr. Golden, and give us the dimensions of the hole itself, the depth and the cubic yardage removed? I am asking a compound [393] question to save time, if it is all right with the court.

A. Hole No. 1 is located in the Northeast Quarter of Section 28. This hole measured approximately 75 feet wide by 90 feet long with very nearly vertical sides and I measured the depth on all of these excavations. I measured the depth at every change or break in the ground. In other words, I resolved the shape of all these holes into fundamental geometrical shapes so we could calculate the yardage and I referred all of the elevations that are shown on this sketch to the ground surface at the highest point of the rim. And this hole with respect to the high point of the rim averaged, roughly, five feet deep and it was approximately flat on the bottom and somewhere near the center of this hole there was a shaft four feet by eight feet by almost 11 feet deep—10.8 feet deep.

My calculated yardage on that hole No. 1 was 1,150 cubic yards, approximately.

Q. Now take No. 2.

A. Hole No. 2 is located in the Northwest Quarter of Section 28 and there was an excavation about 35 by 62 feet, approximately vertical sides, and in the nature of five feet or so in depth with a shaft in the center of

(Testimony of Joseph F. Golden)

it that was $3\frac{1}{2}$ by $7\frac{1}{2}$ by $13\frac{1}{2}$ feet deep. I calculated the yardage on that hole No. 2 to be approximately 470 yards.

Q. Now, Hole No. 3? [394]

A. Hole No. 3 is located in the Southwest Quarter of Section 21. There was an excavation 74 feet by 100 feet and approximately 4 feet deep below the highest point in the rim, with a 5 by 9 by 11.8 foot depth of shaft in the middle, and approximately 1,400 cubic yards removed.

Q. Hole No. 4?

A. Hole No. 4 was located in the Southeast Quarter of Section 21. It was a hole 76 feet wide by 172 feet with approximately vertical sides and varying depths at the corners from 2 to 4 feet in depth, with a shaft in the approximate center that was $4\frac{1}{2}$ by $8\frac{1}{2}$ by 10.7 deep, and having approximately an excavated yardage of 1,760 yards.

Q. Hole No. 5?

A. Hole No. 5 was a wedge-shaped hole that was 82 feet wide by 57 feet across the top and varied in depth from nothing at the outside to approximately 15 or 16 feet at the center and having a yardage of approximately 370 yards. That hole, by the way, was located in the Northwest Quarter of Section 29.

Q. Now, Hole No. 6?

A. Hole No. 6 was an irregular wedge-shaped excavation about 55 feet by 90 feet and approximately 9 feet deep in the deepest portion, with a shaft in the deep portion 4 by 7 by 13 feet deep. That hole was located in the Southwest Quarter of Section 20 and had an excavated yardage of [395] about 450 cubic yards.

(Testimony of Joseph F. Golden)

Q. Hole No. 7?

A. Hole No. 7 was a rectangular excavation about 38 feet by 93 feet, located in the Southeast Quarter of Section 20, approximately 5 or 6 feet deep, running to as much as 11 feet deep in the extreme deepest corner and having an excavated yardage of about 865 yards.

Q. Hole No. 8?

A. Hole No. 8 was an irregular rectangular hole with wedge-shaped end and a prismoidal center portion of about, roughly, 170 feet long by about 40 feet wide with various depths indicated on the chart here, approximately 12 feet deep in the deepest portion. This hole is located in the Northeast Quarter of Section 29 and I calculated the yardage to be 1,750 yards.

Q. Now, Hole No. 9?

A. Hole No. 9 was an irregular wedge-shaped hole of approximately 90 feet by 25 feet, running to 12½ feet deep, located in the Northwest Quarter of Section 20, and having a calculated yardage of 630 yards.

Q. No. 10?

A. Hole No. 10 was approximately 110 feet long by 24 feet wide, various widths on the bottom as indicated on this chart, but running to almost 12 feet deep. It was located in the Northwest Quarter of Section 20. I calculated [396] the yardage to be about 645 yards.

Q. No. 11?

A. No. 11 is a wedge-shaped hole 84 feet by 23 feet, 14 feet at the deepest point. It is located in the Southwest Quarter of Section 29, and with a volume of 310 yards.

(Testimony of Joseph F. Golden)

Q. No. 12?

A. Hole No. 12 is a wedge-shaped hole approximately 13 feet deep, 92 feet by 92 feet wide, located in the Southeast Quarter of Section 29. The volume of cubic yards was 350.

Q. Hole No. 13?

A. No. 13 is an irregular shaped hole about 120 feet long by 20 feet wide and in the nature of 25 feet deep below the high corner. That hole is located in the Southeast Quarter of Section 28 with an excavated volume of 395 cubic yards.

Q. Hole No. 14?

A. Hole No. 14 was a wedge-shaped hole 15, or about 95 feet by 23 feet and 18 feet deep below the highest point on the rim. It was located in the Southwest Quarter of Section 28. Calculated volume of 435 yards.

Q. Now, Hole No. 15?

A. Hole 15 is a rectangular hole with wedge-shaped ends; in the nature of 14 feet deep. About 110 feet long by 24 feet wide. It is in the Northeast Quarter of Section [397] 21 and with a calculated yardage of 670 yards.

Q. Now, 16?

A. 16 was an irregular hole of approximately 12 feet deep, 110 feet by 34 feet wide, and located in the Northwest Quarter of Section 21. There was a calculated volume of 885 yards.

Q. Hole No. 17?

A. Hole No. 17 was a rectangular, practically square hole, 24 by 24, of approximately four feet deep, located in the Southeast Quarter of Section 21, and it had a volume of approximately 75 yards.

(Testimony of Joseph F. Golden)

Q. Now, directing your attention to the remaining 16 holes that you found that are represented on that map, you found those in their respective quarter sections to which you have previously referred—each hole was in one quarter section, is that right?

A. That is correct.

Q. And did you measure those holes? A. I did.

Q. How did you do your measuring on those holes?

A. I took levels—I taped the dimension of the holes and took levels at all of the points, different points of elevation that would have to be considered. In other words, I took level shots at all breaks around the rim and all breaks around the bottom and from that I computed the [398] yardage, approximate yardage.

Q. Now, have you computed the yardage in the various holes on this map?

A. Yes. I indicate on the map the yardage that I calculated of material removed.

Q. Without giving the size of the holes—I do not think that is necessary and we can expedite it if it is agreeable with the court, but will you give us the number of the hole, the quarter section that it is in, and the yardage that you found?

Mr. Hedges: May I ask one question before he does that? May I ask him when he calculated this yardage insofar as it affects the plaintiffs' locations?

Q. By Mr. Wood: What date was that done?

A. That was shortly after the date—that was in April of 1946.

Mr. Hedges: April of 1946?

The Witness: That is right.

(Testimony of Joseph F. Golden)

Q. By Mr. Wood: Now, in calculating the yardage on those holes, Mr. Golden, did you find any of the holes to have sand in them? A. Oh, yes.

Q. And when you did that did you attempt to find the bottom of the hole?

A. Yes, I attempted insofar as possible to determine [399] the yardage that had been excavated and to not take into consideration the blow-sand that was in evidence there. In a number of cases it was just the corners of the hole that was blown away—blown in and it was pretty clear to see where the excavation had been made and all of my calculations are based on what I considered to be the excavation that had been made.

The Court: You made allowance for the sand that had blown into the hole?

The Witness: That is right, insofar as I was able to do so. We dug down to see where the material had blown in, where the nature of the material changed. It was easy enough to do that.

Q. By Mr. Wood: Now, in doing that will you give us the number of the hole, the quarter section it is in and the number of cubic yards that you found removed from that hole?

A. Hole No. 1, in the Northeast Quarter of Section 28, 73 cubic yards.

Hole No. 2, in the Northwest Quarter of Section 28, 74 cubic yards.

Hole No. 3, in the Southwest Quarter of Section 21, 71 cubic yards.

Hole No. 4, in the Southeast Corner of Section 21, 56 cubic yards.

(Testimony of Joseph F. Golden)

Hole No. 5, in the Northwest Quarter of Section 29, [400] 109 cubic yards.

Hole No. 6, in the Southwest Quarter of Section 20, 82 cubic yards.

Hole No. 7, in the Southeast Quarter of Section 20, 71 cubic yards.

Hole No. 8, in the Northeast Quarter of Section 29, 122 cubic yards.

Hole No. 9, in the Northwest Quarter of Section 20, 114 cubic yards.

Hole No. 10; I indicate on this map, this chart as not having been found by me at that time. That hole has subsequently been found and measured and it was found to have approximately 36 cubic yards.

Hole No. 11, in the Southwest Quarter of Section 29, 96 cubic yards.

Hole No. 12, in the Southeast Quarter of Section 29, 63 cubic yards.

Hole No. 13, in the Southeast Quarter of Section 28, 9 cubic yards.

Hole No. 14, in the Southwest Quarter of Section 28, 72 cubic yards.

Hole No. 15, in the Northeast Quarter of Section 21, 102 cubic yards.

Hole No. 16, in the Northwest Quarter of Section 21, 44 cubic yards. [401]

Q. If you will just take the stand again. Do you gentlemen want to look at this other map?

Mr. Painter: Yes.

Mr. Hedges: Yes.

(Testimony of Joseph F. Golden)

Q. By Mr. Wood: Mr. Golden, I show you another map in which appears in the upper left-hand corner the four sections—that is, Sections 20, 21, 29 and 28, and on which there are eight sketches. That map was made by you, was it not, Mr. Golden? A. That is correct.

Q. And the sketches numbered 1 to 8 were a survey made by you of those various workings on that property?

A. That is correct.

Q. And when was that made, Mr. Golden?

A. That was the survey—that survey was made on June 20th, 1946.

Q. Now, directing your attention to Sketch No. 1, which shows on this map as being the Northeast Quarter and the Northwest Quarter of Section 20 under the name of Gunnison 1 and 2, did you measure that hole?

A. I did.

Q. And what did you find the size of the hole to be?

Mr. Painter: I am going to object to that on the ground no foundation has been laid and on the further ground that it is too remote. [402]

The Court: The objection is overruled.

Mr. Painter: In other words, I understand they are endeavoring to prove here now, if your Honor please, that the work that we did was not sufficient as measured in June of 1946, the work having been done in November of 1945.

The Court: Your objection goes to the weight to be given the testimony rather than as to its admissibility?

Mr. Painter: I just wanted to point that matter out to the court.

(Testimony of Joseph F. Golden)

Q. By Mr. Wood: Will you examine Sketch No. 1 and tell us the size of the hole, Mr. Golden?

A. Well, the hole was a long, narrow trench with ramps at both ends and it had a ramp of approximately 25 feet on one end and 42 feet—that is, an inclined excavation on one end, and then the central portion of it was relatively flat. It was about 90 feet long by about 12 feet in width with practically vertical sides. It had a maximum depth of a little better than four feet at the deepest point, and I calculated the volume removed to be about 175 cubic yards.

Q. Now, in making that calculation and measuring that hole did you endeavor to go down to the bottom of the hole as nearly as you could tell, to the depth to which it was originally dug?

Mr. Painter: I object to that as asking for a conclusion and opinion of the witness. And I submit, if your [403] Honor please, that without the removing of the loose and shifting sands and dirt that are naturally blown in on a desert of this type, it would be utterly impossible for anybody to answer that question.

The Court: Your own engineer testified that this formation gets very hard. It shouldn't be difficult to distinguish drifting sand which blows over the desert from the clay below it. The objection is overruled.

Q. By Mr. Wood: Will you answer the question?

The Court: Read the question.

(Question read.)

A. Yes, that is right.

Q. By Mr. Wood: Did you do that on all the holes?

A. In every case I attempted to reconstruct as nearly as I could the original excavation and—

(Testimony of Joseph F. Golden)

Mr. Painter: I think the question has been answered, your Honor.

The Court: That is all right.

Mr. Painter: I object to the voluntary testimony of the witness.

The Court: That is not an objection in Federal Court.

The Witness: I will be glad to tell you that in some cases—

The Court: It doesn't make any difference whether it is given voluntarily or otherwise. [404]

The Witness: In some cases it was necessary to do a little shoveling up against the corners of the holes to determine it, but in most every case, especially on these holes, the bottoms were level from side to side as if they had been made with a carry-all and while the edges of the hole had fills of sand in them it was very easy to determine what the average level bottom of the hole was.

The Court: All right.

Q. By Mr. Wood: Now, on No. 2, which apparently shows on the map as being the Southeast Quarter and the Southwest Quarter of Section 20, known as Gunnison 3 and 4, what was the size of that excavation?

Mr. Painter: May it be understood I have an objection to each and every one of these questions without repeating the objection?

The Court: Yes.

The Witness: This was a long, narrow trench-like excavation with sloping ramps at each end; 36 feet on one end and 25 feet on the other, and relatively flat center section about 45 feet long. The extreme depth of the

(Testimony of Joseph F. Golden)

hole below the ground adjacent at the rim was about six and a half feet.

I calculated the yardage at 120 cubic yards.

Q. By Mr. Wood: Now, No. 3?

A. No. 3 had the same thing—the ramps sloping at [405] either end and approximately 25 feet long and a 46 foot long center section with a depth of six and a half feet, approximately. 175 cubic yards.

Q. Now, No. 4? I am sorry. I did not read "the Northeast Quarter and Northwest Quarter of Section 21 known as Platte 1 and 2."

Now, on No. 4, which appears to be the Southeast Quarter and Southwest Quarter of Section 21, known as Platte 3 and 4, what was the size of that hole?

A. That hole had 40-foot sloping ramps on both ends and a 25-foot center section that was approximately eight feet deep. 100 cubic yards calculated.

Q. Now, No. 5, which appears to be the Northeast Quarter and the Northwest Quarter of Section 28, known as Silver Heels 1 and 2?

A. No. 5 had a 25-foot and a 30-foot incline on the ends, and a 50-foot center section that averaged approximately eight feet deep, and I calculated it at 220 cubic yards.

Q. Now, No. 6, which apparently appears to be the Southeast Quarter and Southwest Quarter of Section 28, described as Silver Heels Nos. 3 and 4. Will you tell us the size of that hole?

A. Well, that hole was just a very, very shallow excavation. As I recall, it was on the surface of very hard clay and it was a very, very shallow hole—averaged [406] from a half foot to a foot deep only. About 150 feet

(Testimony of Joseph F. Golden)

long and 12 feet wide, and I calculated the yardage at approximately 50 cubic yards. I might say the hole was very irregular and no attempt was made on that particular hole to determine it to a very fine point, the depths, other than they were not more than a foot deep at any point.

Q. Now, No. 7, which appears to be the Northeast Quarter and the Northwest Quarter of Section 29, known as Horse Shoe No. 1 and Horse Shoe No. 2. Tell us the size of that hole.

A. It had sloping ramps of 45 and 35 feet, with a 40-foot long center section, all of it about 12 feet wide and in the nature of six or seven feet at the deepest point and I calculated it at 150 cubic yards.

Q. Now, No. 8, which appears to be the Southeast Quarter and the Southwest Quarter of Section 29, known as Horse Shoe No. 3 and 4. Will you tell us the size of that hole?

A. That hole had ramps of 40 feet and 30 feet and a center portion of approximately 100 feet long. It was about three feet deep at the deepest point and I calculated the yardage about 150 cubic yards.

Mr. Wood: We offer this map as the defendants' next exhibit.

Mr. Painter: I object to the introduction of it on the [407] ground there has been no foundation laid and the data contained thereon is too remote.

The Court: Objection overruled.

The Clerk: Defendants' Exhibit MM in evidence.

(The document referred to was marked as Defendants' Exhibit MM, and was received in evidence.)

(Testimony of Joseph F. Golden)

Mr. Wood: At this time, if the court please, we offer the Defendants' Exhibit LL in evidence.

The Court: All right, it may be received.

(The document referred to was marked as Defendants' Exhibit LL, and was received in evidence.)

Mr. Wood: You may cross examine.

Cross-Examination

By Mr. Hedges:

Q. Mr. Golden, you were not here yesterday, were you? A. No, I was not.

Q. I show you Plaintiffs' Exhibit 1, a map similar to yours only on a little larger scale, and I call your attention to the fact that each of these red marks on the quarter sections have been identified as pits made by the plaintiff in this action, each one in each of the quarter sections, and in some there happens to be two, for example, in Temperate No. 3, there are two locations located in the same quarter section and the same is true in Tropical 1 and Temperate No. 4. I notice on your map that you only find one location. Did you see any other locations other than [408] the one you have indicated on your map on Temperate No. 4?

A. I believe there were some excavations that were made by Bratton & Sturgis right adjacent to some of these other holes in order to duplicate the hole at the approximate same site. I don't recall now whether I measured—

(Testimony of Joseph F. Golden)

Q. In fairness to you, you have one marked on the board here on our Temperate 4 location, and it is circled with a figure "17"? A. That is right.

Q. Which looks like it might be this one here?

A. That is correct.

Q. However, on Torrid 4 and Temperate 3—strike that. On Temperate 3 and Tropical 1 on Plaintiffs' Exhibit 1, there are two locations each, while you only show one on your map. Is that correct?

A. I only show one on my map.

Q. Did you notice any other pits similar in character to the ones you have identified at the two locations I have just indicated?

A. I can't remember exactly where they were. I recall that there were some excavations that were similar to the ones I was measuring at or near the ones that I measured. I believe that I was told that Mr. Bratton had excavated those, not on any station that I had set but adjacent to holes that were already excavated, that had been [409] dug by others and I didn't measure any that do not appear on my charts.

As I recall, I think that I was instructed not to.

Q. In other words, you didn't know who these various pits on the property belonged to? Someone informed you that some were the Lewis pits and some the Hammond pits and so forth, is that not a fact?

A. The only ones that I know of, of my own personal knowledge who excavated are the ones I indicate with

(Testimony of Joseph F. Golden)

the circle on that first map—the ones that were done by Bratton & Sturgis.

Q. And who requested you to make the two maps, Defendants' Exhibits LL and MM?

A. Mr. Lancaster.

Q. Mr. William Lancaster? A. That is correct.

Q. And is he the one that pointed out to you the various locations that are indicated on Plaintiffs' Exhibit 1, and told you whose locations those were?

A. That is correct.

Q. In other words, if he had not pointed out the one location each on Temperate 3 and Tropical 1 you would not have made a calculation of that hole?

Q. Well, I had a little—I had other knowledge, other information than that which I got from Lancaster as to [410] who had dug the holes and when.

Q. Well, let me put it this way. Mr. Lancaster told you there were 16 claims on those sections that were the claims of Mr. Lewis and the plaintiff in this action, is that correct? A. Substantially, yes.

Mr. Hedges: That is all.

The Court: Any questions?

Mr. Painter: May I have just a second, your Honor. No cross examination.

The Court: Any other testimony, Mr. Wood?

Mr. Wood: Yes, if your Honor please.

CHARLES H. BRATTON,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Charles H. Bratton.

Direct Examination

By Mr. Wood:

Q. Mr. Bratton, where do you reside?

A. El Centro, California.

Q. And what is your business or occupation?

A. I am a member of the firm of Bratton & Sturgis, whose business is land leveling and general farm work. [411]

Q. Are you familiar with the property that is in dispute here, described as Sections 20, 21, 28 and 29 in Township 14 South, Range 12 East? A. I am.

Q. Have you been on that property, Mr. Bratton?

A. I have.

Q. Were you on that property in 1946?

A. I was, yes.

Q. And what time in 1946 did you go on the property?

A. The first time I was on the property was on or about March 20th of 1946.

Mr. Hedges: Mr. Wood, would you have the witness explain what he is reading from? I assume they are his field notes. He appears to be testifying from some memorandum.

Mr. Wood: I am going to exhibit to you a copy of what he is using.

Q. By Mr. Wood: At whose request did you go on the land? A. Through Mr. Lancaster.

(Testimony of Charles H. Bratton)

Q. And did you do any work on this land?

A. I did.

Q. When did that work commence?

A. That work started March 23rd, 1946.

Q. Now, Mr. Golden on the witness stand has described on Defendants' Exhibit LL, 17 excavations commencing with, [412] over on the left-hand side, No. 1. Are you familiar with this map?

A. I have seen the map, yes.

Q. And do you know what those excavations are that are there? A. Yes.

Q. Now, did you do that work?

A. Yes, it was done with my equipment.

Q. And under your direction? A. Yes, sir.

Q. You were on the property from time to time supervising it? A. That is correct.

Q. Now, what was the reasonable value of the work done on excavation No. 1, which is the Southeast Quarter of Section 28?

Mr. Hedges: That is objected to. There is no proper foundation laid. This witness has not been qualified as I have heard yet, as to his knowledge of the cost of making excavations.

Mr. Wood: I will take it a little further along.

The Court: I assume he does, but I think he could be qualified a little more.

Q. By Mr. Wood: In your line of work, Mr. Bratton, have you done excavating work? [413]

A. Yes.

Q. Much of it? A. Considerable.

Q. And is that your general line, the moving and excavating of dirt? A. That is right.

(Testimony of Charles H. Bratton)

Q. And do you from time to time do that under contract?

A. Well, it isn't under contract. We do it either—I am assuming you want me to explain our type of work?

Q. That is right.

A. We move dirt in land leveling operations either by the yard or by the hour or by the job.

Q. Now, how long have you been engaged in that business? A. Since April 1st, 1943.

Q. And are you familiar with the cost of moving such dirt? A. Yes.

Q. Now, what was the reasonable value of the work done on location No. 1, the Northeast Quarter of Section 28?

Mr. Hedges: That is objected to as being incompetent, irrelevant and immaterial. I don't think that what the reasonable value was, your Honor, is material. If he wants to testify as to what the actual cost was of moving that on those locations I think that is material, but I don't think [414] the reasonable value has any bearing.

The Court: I think the statute says so many dollars to be spent on each 160 acres.

Mr. Wood: It says it must be dollars worth.

The Court: Well, a dollar's worth means a dollar's value.

Mr. Hedges: I believe his question was, "What was the reasonable value of the work?"

The Court: There are two ways of proving value.

Mr. Hedges: Well, I will withdraw the objection, your Honor. It is probably preliminary, anyway.

The Court: All right, go ahead.

(Testimony of Charles H. Bratton)

Q. By Mr. Wood: What was the reasonable value of doing the work on No. 1?

The Court: I will have to have the description of that.

Mr. Wood: That is the Northeast Quarter of Section 28.

The Court: Northeast?

Mr. Wood: Yes, Northeast Quarter of Section 28, known as Andrew No. 2.

The Witness: Do you want the yard value?

Q. By Mr. Wood: Dollars.

A. We did \$161.00 worth of work on that particular location.

Mr. Hedges: Is that the bill that you rendered? [415]

The Witness: Yes.

Q. By Mr. Wood: Now, on No. 2 or the Northwest Quarter of Section 28, known as Andrew No. 1?

A. On Andrew No. 1 we did \$161.00 worth of excavation.

Q. Now, on what is known as No. 3, or the Southeast Quarter of Section 21, Mack No. 1?

A. On Mack No. 1 we did \$160.00 worth of excavation.

Q. On the Northwest Quarter of Section 29, Jackman No. 1?

A. On Jackman No. 1 we did \$160.00 worth of excavation.

Q. The Southwest Quarter of Section 20, known as Buddy No. 3?

A. On Buddy No. 3 we did \$160.50 worth of excavation.

(Testimony of Charles H. Bratton)

Q. On the Southeast Quarter of Section 20, known as Buddy No. 4?

A. On Buddy No. 4 we did \$163.00 worth of excavation.

Q. The Northeast Quarter of Section 29, known as Jackman No. 2?

A. On Jackman No. 2 we did \$162.00 worth of excavation.

Q. On the Northeast Quarter of Section 20, known as Clay No. 3?

A. On Clay No. 3 we did \$163.00 worth of excavation.

Q. The Northwest Quarter of Section 20, known as [416] Clay No. 4?

A. Clay No. 4 we did \$162.50 worth of excavation.

Q. The Southwest Quarter of Section 29, known as Ben No. 1? A. On Ben No. 3—

Q. I mean Ben No. 3.

A. On Ben No. 3 we did \$162.00 worth of excavation.

Q. The Southeast Quarter of Section 29, known as Ben No. 4? A. What was the description?

Q. Ben No. 4. A. The description?

Q. The Southeast Quarter of Section 29.

A. \$161.00 worth of excavation.

Q. On the Southeast Quarter of Section 28 known as Clay No. 2?

A. On Clay No. 2 we did \$162.50 worth of excavation.

Q. On the Southwest Quarter of Section 28, known as Clay No. 1?

A. On Clay No. 1 we did \$162.00 worth of excavation.

(Testimony of Charles H. Bratton)

Q. On the Northeast Quarter of Section 21, known as Carr No. 3?

A. Carr No. 3, the Northeast Quarter of Section 21?

Q. Yes.

A. That was \$162.00 worth of excavation. [417]

Q. The Northwest Quarter of Section 21, known as Carr No. 4?

A. \$162.00 worth of excavation.

Q. Now, a hole in the Southeast Quarter of Section 21, what was the labor cost on that hole?

A. Southeast Quarter of Section 21?

Q. Yes, I just want the labor cost.

A. The labor only in that hole was \$66.01.

Q. And that is the hole on the map here marked No. 17, is it not?

A. Yes, that was a test hole dug by hand.

Q. Now, the other holes that you dug down there, what kind of equipment did you use?

A. I used Caterpillar equipment equipped with a bulldozer and hydraulic scraper.

Q. How long did it take to do this work?

A. I was on the job there 15 working days.

Q. And approximately how many hours a day?

A. We averaged about 9 hours a day for each piece of equipment.

The Court: How many men on each piece of equipment?

The Witness: One man.

The Court: How many pieces of equipment did you use?

The Witness: I had a maximum of six units there.

The Court: All right. [418]

(Testimony of Charles H. Bratton)

Q. By Mr. Wood: Now, Mr. Bratton, in your business in the Imperial Valley do you employ what are commonly called laborers, pick and shovel men?

A. I don't commonly employ them, no, because my work doesn't involve that on the special jobs that we do.

Q. Now, on this job did you employ labor?

A. I did.

Q. And what was their rate of pay?

A. Their rate of pay was 75 cents per hour.

Q. Do you know what the prevailing rate of pay in the Imperial Valley for that type of labor has been for the last couple of years?

A. Last year at that time the prevailing wage for pick and shovel men, Mexican labor, was 75 cents per hour.

Q. Do you know what the prevailing rate was for Mexican labor in November and December of 1945?

A. I couldn't verify it. It would be approximately the same.

Q. Has there been any change to your knowledge in that in the last couple of years?

Mr. Painter: Object to that as already asked and answered. He said "approximately."

The Court: That calls for a conclusion. The objection is sustained.

Q. By Mr. Wood: In the doing of the work out there [419] on this property you used Mexican laborers with pick and shovels on some of these holes?

A. We did, yes.

Q. And can you tell us approximately or tell us how many, or approximately, how many cubic yards an hour was removed by the Mexicans in this work?

A. Well, it wouldn't—do you want the individual amount per man or by the group?

(Testimony of Charles H. Bratton)

Q. Well, for instance, if you can answer it by the man I would like to have it that way.

A. Well, in that type of soil it varied out there, but in the hardest clay in which we were digging I would say that a man would average in a day's work, he might dig out two or two and a half yards of that clay per man.

Q. And in the stuff that was not so hard would he increase his production? A. Yes, he would.

Q. Do you know approximately how much cubic yardage—how much a cubic yard it cost you to remove the clay out there by hand?

A. By hand the nearest we could calculate the yardage at would be about a dollar a yard.

Mr. Wood: You may examine.

Mr. Hedges: No cross examination.

The Court: Any questions, Mr. Painter? [420]

Mr. Painter: No cross examination.

The Court: Any further testimony, Mr. Wood?

Mr. Wood: Yes, I want to recall Mr. Lancaster for a few questions. Just a minute, I overlooked one thing with this witness.

The Court: Very well.

Q. By Mr. Wood: Mr. Bratton, are you familiar with the moving of dirt with a bulldozer and carry-all in the Imperial Valley? A. I am.

Q. And do you do that type of work?

A. Yes, we do.

Q. Can you tell the court what it would cost in your opinion, to move the dirt per yard of the type that was found on these premises?

A. In averaging our costs on the yardage basis out there it would average about 30 cents a cubic yard.

(Testimony of Charles H. Bratton)

Q. And you moved the dirt in substantially the same manner?

A. We moved the dirt in the same manner with the equipment, yes.

Mr. Wood: That is all.

Mr. Hedges: No cross examination.

The Court: I have nothing.

Mr. Wood: Mr. Lancaster, will you take the stand? [421]

WILLIAM F. LANCASTER,
called as a witness by and on behalf of the defendants,
having been previously duly sworn, was recalled and
testified further as follows:

Direct Examination

By Mr. Wood:

Q. Mr. Lancaster, after Mr. Jose finished his work down there did you examine that work? A. I did.

Q. On each of the 16 sections?

A. That is right.

Q. And were you able to determine approximately how much of a cut he had made on those sections?

Mr. Hedges: Just a moment. By that what do you mean, counsel? The area or yardage?

Mr. Wood: I am asking for area first and then yardage.

A. Well, the open cuts I would say there was approximately, between 60 and 70 yards of dirt was moved on the average on all the 16 sections. Some of those near the road were more than that, about 400 cubic yards.

(Testimony of William F. Lancaster)

Q. On each section approximately how much cubic yardage of dirt did he remove from the cut in each quarter section? A. Approximately 60 to 70 yards.

Q. Do you have a picture of that section you were [422] exhibiting to me this morning?

A. Yes, I think I have.

Q. Now, this represents what hole, Mr. Lancaster?

A. That represents Mr. Lewis' hole.

Q. Do you recall what section it is on?

A. Yes; it is on the Southeast of Section 28.

Q. Southeast Quarter of Section 28?

A. That is right.

Q. Who took that picture? A. I did.

Q. And when did you take that picture?

A. I believe—

Q. It is not marked.

A. I took that picture in April 1946.

Q. By Mr. Wood: And—

Mr. Wood: We offer this as Defendants' next exhibit, your Honor.

The Court: It may be received.

(The document referred to was marked as Defendants' Exhibit NN, and was received in evidence.)

Mr. Wood: That is all.

The Court: Any questions?

Mr. Hedges: Just one or two. [423]

(Testimony of William F. Lancaster)

Cross-Examination

By Mr. Hedges:

Q. How many yards did you estimate, Mr. Lancaster, had been removed from the location which you described to be the Southeast Quarter of Section 29 as "Mr. Lewis' hole"?

A. When I examined it it didn't look like very much to me, about ten yards at the most.

Q. Your business is—you are an auditor, are you not? You are not an engineer? A. That is right.

Q. Were you here when Mr. Imler, the registered engineer, testified that he calculated it at 50.2 cubic yards?

A. That is right.

Mr. Hedges: That is all.

Mr. Painter: No questions.

Mr. Wood: That is all.

The Court: Any further testimony by anybody?

Mr. Hedges: That is all.

Mr. Painter: That is all.

The Court: Do all parties rest?

Mr. Wood: May the record show, if your Honor please, a request was made on us yesterday to produce the receipts and checks of Mr. Lancaster. I have exhibited them to counsel. [424]

Mr. Hedges: I have seen them and I am satisfied.

Mr. Wood: We are perfectly willing to have them satisfied.

Mr. Painter: Are you through, Mr. Wood? Could we have two or three minutes?

The Court: I was going to declare a short recess and then after that I will hear any argument you desire to present. If you have additional testimony I will hear that.

(Short recess.)

The Court: All right, gentlemen.

Mr. Painter, have you decided about rebuttal testimony that you may have?

Mr. Painter: No, we are resting.

The Court: All right, I will hear any argument.

Mr. Hedges: Mr. Shirley is going to make the opening argument, your Honor.

The Court: All right.

Mr. Shirley: Upon the theory, your Honor, that perhaps I should earn my part of the fee in this matter I have been delegated the task of presenting the opening argument.

The locations that were made in this matter reminds one of people trying to catch a train. Everyone rushing madly to get their notices down—even running, it has been testified to here, and getting the stakes in the ground as quickly as possible, and, I think, without too [425] much regard to the question of their security in some instances, but considering mostly the question of speed.

Section 2303 of the Public Resources Code of the State of California, says:

“The location of a placer claim shall be made in the following manner:

“(a) By posting thereon, upon a tree, rock in place, stone, post or monument a notice of location, containing the name of the claim, the name of the locator or locators; date of location, number of feet

or acreage claimed and such a description of the claim by reference to some natural object or permanent monument as will identify the claim located."

Now, there is a P.S. on this statute that says that if they are surveyed lands that a description, a reference to the legal description thereof will satisfy the requirements of the Code that the property be designated by reference to natural or permanent monuments.

The Court: Also there shall be a marking.

Mr. Shirley: Marking, yes.

Now, the following section, Section 2304, Subdivision "B" provides what shall be done with reference to discovery work.

Section 2305 provides what additional work shall [426] be done if there is more than 20 acres involved. As there was in this case, there must be an expenditure of a dollar an acre at least, and in addition to a seven-foot cut on the claim—seven cubic yards—that is, a removal of seven cubic yards upon the claim.

I would like to say that it is my understanding of the law that in order for a person to locate a piece of property where there is likely to be conflicting claims, it is incumbent upon him to proceed with the greatest of precaution to see that his claim will be marked and delineated in a safe and as permanent a matter as possible for the purpose of giving notice to all subsequent locations.

That is what the plaintiffs in this case did. In the first place, your Honor, they drove a stake into the ground upon which was printed in black paint, the legal description of the property and the name of the claim.

That alone should be sufficient and is legally sufficient to mark the claims, but in addition to that the plaintiffs in

this case acquired Mason jars and they buried these Mason jars at the foot of these posts, with the sealed top plainly visible, and inside of this Mason jar they inserted a duplicate copy of the claim which is in evidence here. In other words, in each instance, so far as the plaintiffs are concerned, it is my opinion from a review of the evidence in this case, that the conclusion is impelling that they complied with this requirement of the law in every [427] respect; that there is no one who could subsequently come upon this land and view the markings and the postings without knowing that there had been someone there. And I will submit to your Honor that you may go to the property now and with reasonable certainty you may expect to find upon that property evidence of the markings of the plaintiffs in this case.

The point I am making is they did not, your Honor, in their haste, and of course everyone in this case was a little bit in haste, but they did not overlook that one requirement of the law that they exercise a reasonable-amount of safety and precaution in the marking of these properties.

Now, after they had marked and properly filed upon these properties by marking them properly as I suggested, they then proceeded to do the discovery work.

Now, how was this discovery work done? Your Honor, it was done in the manner that is customary in mining. It was done by hand labor. They brought in picks and shovels. They dug from this property sufficient of the overlay of dirt to reach the clay which is the valuable thing about which these people are concerned.

They removed a sufficient quantity of the dirt in every instance—they removed more than 7 cubic yards and in many of them 32 cubic yards even in the hardest of clay,

and in every instance they have removed more than [428] sufficient and in every instance they spent more than \$160.00 per claim, each claim constituting 160 acres.

In short, the uncontroverted testimony before this court now, notwithstanding the attempts of anyone to discredit any testimony given by the bankers that were produced here.

They had received this cashier's check. In one instance it was for \$2,500.00. The testimony was that these men were paid in the bank and that the money was put in envelopes and paid. Even the time book was before the court. All the evidence in this case is very impelling, it seems to me, that the plaintiff has in the best of good faith and very properly complied in all respects with the requirements in the law as far as their filings are concerned.

Now, after that was done in accordance with Section 2313 of the Public Resources Code, the plaintiff in this case filed, or recorded with the County Recorder of Imperial County a copy of the notice of location. Upon the back of each notice of location that was recorded there was contained all of the information that Section 2313 sets forth must be recorded. In other words, simultaneously with the filing of these notices there accompanied the notice a statement of the amount of discovery work that had been done and these were recorded in Imperial County within [429] the period prescribed by that section.

In other words, I am not going into great length about the plaintiffs' case because I think the evidence is very impelling before the court that they have complied in all respects with the requirements of the Federal and State statutes with reference to filings upon these claims.

Now, with reference to the claim by Mr. Jose and others, the first thing, of course, that I would like to say and dispose of quickly, is that under this Act of October 19, 1920, anything that was done prior to the 7th day of September, 1945 is, in our opinion, an absolute nullity; that it gave him no rights; that it vested him with nothing and that if he was ever in possession prior to that time it was illegal and that he has no rights and had no rights at any time in this action as far as the evidence is concerned prior to January of 1946, if he has any at all.

Even if there were defective notices filed on this property in January of 1946 Mr. Jose was in no position to come upon this property, knowing as he was bound to know at that time, that there were others in the possession of that property under a legal entry. He knew by that time that this land had been re-opened for entry. He could look at the property and physically see that people had been working the property. It was evident to the naked eye. There were mounds. There were holes dug. There had been [430] large amounts of clay removed. He could see with the naked eye even if there had not been a posting on the property. He could see that they were in the possession of someone else.

Therefore, in January of 1946, when he came in and attempts to make a location upon this property he violated the statute and he was a trespasser and he knew that someone else was in possession. Possession itself is notice and is sufficient to exclude the rights of anyone else coming in and making an attempted location.

With that I am going to dispose of the Jose claims because I think they are absolutely void and subservient to the rights of the plaintiffs in this case and for that matter, the other defendants.

As to the defendants Hammond, et al., there are three things that I think put the plaintiffs in this case in the position of the owners and holders of the greatest equities and the greatest rights.

The first thing is this. I think it would be superfluous for me to say that quite obviously the parties concerned knew that there were going to be conflicting claims. I think that is quite obvious. They ran when they filed their claims. They had stakes that they drove into the ground which they said they drove in in some instances six inches and in some instances ten inches up to twelve, [431] and then they ran right quickly and took a picture. It would amaze anyone who had been on the property, and I have, to visualize on a hot summer day anyone performing those acts in the rapid sequence and fashion which they have indicated. Even assuming the entire veracity of their claim, they made no notation on their claims as to time. I think that is significant because in every instance where a claim was filed on both the 6th and 7th of September by the plaintiffs in this case, they in the best of good faith and open and above board placed upon those notices the time of day that they posted that claim.

While I am mentioning the 6th of September I might say to your Honor that the position we take with reference to our filings on the 6th is this: We filed on the 6th of September out of an abundance of precaution because we were not certain whether the day was going to be—the date was going to be—whether the 6th day of July was going to be counted or not and, therefore, out of an abundance of precaution, as I said, we filed on the 6th of September and then were there again, of course, to file on the 7th.

We felt, too, that the 7th was the proper date for the filing. But on the 7th of September when the defendants Hammond, et al. filed their claims, they placed them upon a board and they nailed them by a tack or something to these boards in a precarious fashion and on the open desert [432] where the winds blow and there was testimony before your Honor the wind does blow out there. He said there was a nice breeze. In other words, they were placed upon a stake, nailed to a board subject to the elements and subject to being blown away by the wind.

I would not question that, your Honor, if it were not for the fact that the parties knew that there were to be conflicting claims; that they must have known that the question of whether or not that was a property filing was going to be questioned. They must have known that it would be—that if they were trying to give notice to locators the very purpose of the statute would not be served by this type of filing and they made no attempt at all of any kind to bury any of these claims—any of these filings in tin cans or otherwise. They made no attempt at any time to establish monuments, to bury these things in monuments as is held in so many instances as a requirement, and at the very same time that they were recording—that they were filing their notices on this land there was a man in the Recorder's office in Imperial County standing there with the originals of these claims and he threw them into the filing window at exactly ten o'clock and they were then recorded.

Now, there is some law to the effect—excuse me, I don't want to leave my first point. My first point is that they were obligated to exercise an amount of caution in [433] the filing of those claims because they were charged with knowledge of the fact that there would be conflicting

claims. And I want to call your Honor's attention to a volume of Lindsay on Mines, Volume 2, and particularly referring to Section 365, and in the middle of page 821, reading a paragraph from this book, which says:

"It is manifest that some precaution should be taken to protect the notice from destruction by exposure to wind and weather. While the law does *does* not require specifically the locator of a claim to keep his notice up permanently, perpetually, that is, yet ordinary prudence suggests it should be maintained and properly protected."

I observe that one of these has been brought into court here and is now among the records.

There is no testimony as to how it became detached from the location and I am not sure that the mere bringing it in here is not of itself an abandonment of the claim because it is no longer on the property and I think it is an abandonment of the claim.

Further reading from Lindsay on Mines, and it has always been my understanding from that Lindsay is the miners' Bible—Section 371 of that same volume at page 872, Mr. Lindsay says:

"The object of the law in requiring the location [434] to be marked on the ground is to fix the claim to prevent floating or swinging so that those who, in good faith, are looking for unoccupied ground in the vicinity of previous locations, may be enabled to ascertain exactly what has been appropriated in order to make their locations upon the residue. It also operates to determine the right of the claimant as between himself and the general Government."

On that same point, further reading from Lindsay on Mines, Section 375, page 829, Mr. Lindsay says:

“Ordinary prudence will suggest to the locator the advisability of preserving his marks. A failure to so preserve them exposes the owners to hazard occurred by the death of locators and witnesses and other circumstances which might prevent the fact of marking from being established. Owners, therefore, should use reasonable diligence in restoring and identifying boundary monuments.”

I think in their anxiety to beat everyone else in point of time, that they overlooked and neglected another very substantial requirement of the law and that is not only that they be first in point of time, your Honor, when it is only a matter of minutes, but that they also use the necessary precaution so that when they are marked that any subsequent [435] locator may know the marking.

In their further anxiety to beat everyone else they, as pointed out a moment ago, recorded these claims before they were ever filed.

We objected to the introduction of those claims upon the ground that they had been recorded before they had been filed and they were offered in evidence for the sole purpose of proving that a duplicate of those instruments had been filed on the ground, as I understood it, and for no other purpose.

The filings that were made on that day and that were recorded on that day are void for the reason that, in the first place, they give no notice to anyone because a notice of location is not required to be filed until there is filed simultaneously therewith or accompanying it, a statement of the discovery work that has been done. That was not

attached to this claim. It was not filed in accordance with Section 2313 of the Public Resources Code and it is void.

But even assuming that it is not void—well, first of all, I would like to substantiate that statement by a reference to American Mining Law by A. H. Ricketts, Section 698. He says:

“In the absence of any intervening right the recording of a notice of location before it is posted upon the ground will not vitiate the location.” [436]

Now, it says:

“In the absence of intervening rights,”

and I submit that in this case there were intervening rights because they recorded these before they filed in every instance except possibly one, and that is the first recording and that was recorded at ten o'clock. Every other one was recorded subsequent to that in point of time and they are void so far as the plaintiffs in this case are concerned because of their failure to comply with 2313 of the Public Resources Code.

Now, there is a third point that I wish to make with reference to the Hammond claims and then I am going to finish my argument.

There has been introduced in this case what is called an amended claim by Hammond. An amended claim can relate back and amend only a valid claim. An amended claim cannot revert back and cure defects in a void claim.

The amended claim was recorded for the very simple reason that the first location did not at any time contain the information that is required by Section 2313 of the Public Resources Code.

When they recorded the amended claims they did put in a reference to the boundary marks which, incidentally,

was also not included in the first claim, and a statement of the work that had been done.

That amended location was never posted upon the [437] ground or filed upon the property. It does not contain the same information that was upon the original notices that were posted in the ground because the original notices did not contain a statement, a reference to the natural monuments and so forth which were contained on back of all the plaintiffs' claims and are legally required to be filed; and they were never at any time re-located.

Besides all that, your Honor, even if there were no reason for holding that they are void or that they cannot relate back to the original filing, the fact of the matter yet remains that intervening rights had come in between the time of the filing of the original notice of location and the filing of this amended location.

That is important for this reason. There has never at any time been recorded in the County Recorder's office of Imperial County these locations which were originally filed on the 7th day of September, 1945. The only recording that was done in accordance with Section 2313 of the Code is the recording of that amended notice of location.

Now, between the time that this notice was filed, the original notice was filed and the amended notice was filed, certainly intervening rights came in and those rights are the rights of the plaintiff.

I wish again to refer to my friend Lindsay on Mines, Section 398 at page 929, in which this is said: [438]

"A distinction is drawn between cases where the original certificate is absolutely void or where the amended certificate seeks to appropriate new and additional ground and one where the original is simply

defective. If in making the amended location it included land not in the original location and interfered with existing rights as to such land the amended location would not relate back to the date of the original location so far as the recently included land is concerned."

The Supreme Court of Arizona expresses the opinion that the word "void" used in the statute should be construed to mean "voidable." In other words, a notice failing to conform to the statute and thus declared by law to be void may, in the absence of intervening rights, be made valid by an amended claim.

The same statement in effect, will be found, your Honor, in Ricketts American Mining Law, Section 711:

"Where a record is found to be defective or erroneous it may be amended when not detrimental to an intervening locator. The amended record takes effect by relation back to the date of the original location and is admissible in evidence in connection with the original defective record." [439]

Now, I submit, your Honor, that the plaintiff in this case has established the filing of valid locations, the performance of the necessary discovery work, the recording in the County Recorder's office of the information required by Section 2313 of the Public Resources Code. Everything in connection with the plaintiffs' claims is regular and proper. Everything that was done was done with the necessary precaution and in a good and proper manner and in the manner that the law required, and we submit in determining the matter here the plaintiffs' claims should be held valid in all respects.

The Court: Mr. Painter.

Mr. Painter: I assume, having been the second in the presentation of our case, I should proceed.

The Court: All right.

Mr. Painter: If your Honor please, I am going to take a slightly different position here than the plaintiffs did in connection with this matter. I am going to submit to the court that I think it is apparent from the evidence that has been introduced, that we were not fortunate enough to have run fast enough on that morning to have covered the whole territory.

I can't see that any penalty should be attached to anyone for hurrying about in the middle of a desert on a warm day. There wasn't any question but what the two groups [440] knew that each one was trying to outdo the other in speed in reaching these various claims.

I admit that our men worked diligently to post the properties as rapidly as they could. I submit that an examination of the time of the filing of Plaintiffs' claims will indicate that they did some very fast walking, if not running, themselves, to have covered the territory that they wanted. So, so far as that part of it is concerned, if your Honor please, I don't think it has any bearing on the case whatsoever.

So far as the permanency of the postings is concerned, I don't think there is anything that counsel has read to us that has in the slightest degree discredited the manner in which the claims of the defendants and cross complainants, Hammond, et al., were posted.

In fact, I think that the proof of the pudding, if your Honor please, is the fact that in November of 1945, when Mr. Wilson visited the property, each one of those notices was still in place, posted as they were placed there on the property.

So far as having conformed to the statute, that is to let the world know that the Hammond group are claiming those parcels of property as a mining claim.

I think that the method adopted by the Hammond group was much more fair than that adopted by the plaintiff. [441]

And bear in mind now that I am not criticizing the manner in which the plaintiff posted their notices. I think they went around and did it as best as they could to conform to what in their opinion was the law.

However, bear in mind the manner in which these notices were posted. They were posted in pint jars or were placed in pint jars in a shallow hole that was dug on the property.

Now, I submit to your Honor that within 24 hours, with normal conditions on the desert and with this brisk wind blowing, there was a very strong possibility that each and every one of those jars would be covered by the shifting sands.

Now, there is nothing left then but a post on which has been placed some figures; and those are very small posts, as they testified.

Now, if there is going to be any criticism here of the manner of posting let us compare the two methods and find out which one really gave notice to the world. I think it can be answered in this way, if your Honor please. Here were notices that were posted on that property that two months later stood there in place and were still telling the world that the Hammond group was claiming those claims as mining claims.

They were posted on boards that stood out so that [442] you could see them. They are there on the desert and I think there cannot be any question but that the statute was complied with in that respect. So, I don't

think as between the plaintiff and defendant Hammond that there should be any criticism as to the manner in which the postings were made.

Read the statute and you can see there are several methods provided and the elements unquestionably would attack each one of those notices posted under any one of those procedures and there isn't any provision in there that they be placed in a jar and buried in the sand or placed in a can and buried in the sand.

The fact of the matter is if we want to get technical about it, that is the least fair of all methods and gives the least notice to the world.

Now, I am going to take a different position than they have in connection with the filings on these properties.

I think as between the plaintiffs and the Hammonds that the evidence shows that they are ahead of us on certain claims because they have and did file their notices of location on those claims before we did. The record so shows. The record is clear in that respect.

Their criticism as to the time element involved, if I recall the testimony correctly, was that Mr. Hedges asked Mr. Norris when he was on the stand, if he had kept any record of the minutes involved and the time involved and he [443] was handed by Mr. Norris a sheet of paper on which he kept notes while that was being done on the property. We have never heard a bit of criticism from Mr. Hedges about the contents of that instrument and it was being used by Mr. Norris on the stand.

I think that he responded to a question by Mr. Hedges that those were memos that he made at that time and that place which were placed on the other exhibit which he had, and which he had in his hand, and is here for identification. So, there can be no question as far as

these claims are concerned, with the possible exception of four claims in the most southerly portion of the property, the exact hour and minute at which those claims were posted—were properly posted and properly before the court.

Those four locations are Frigid No. 3, Frigid No. 4, Tropical No. 3 and Tropical No. 4, where Mr. Thompson stated that he left the automobile at about 11:35 and went down to Silver Heels No. 3 and drove his post in the ground there, built some stones up around it and went over to Silver Heels No. 4 and did the same thing. And then he went back to the automobile and back to Horse Shoe No. 3 and he did the same thing on Silver Heels Nos. 3 and 4, and then over to Horse Shoe No. 4 and did the same thing there.

Now, on those four claims he estimated the time. There isn't any question about it, however, from the time [444] element involved, in going from point "D" down to Silver Heels, to Section 28, which is this section in here, and back over across to the machine again, and back to the other plot.

I don't think by an analysis of that that one would say the time element is very far off.

There is a very interesting thing, however. It will be observed that, taking the plaintiffs' testimony as to the time when they posted, and those postings were all done by this young chap Hodgson—I am not disputing his word that the time testified to by him was the actual time that they posted on those four parcels down there. And in my opinion if the court holds that by posting ahead one minute creates an interest there—

The Court: Providing your notice was not defective. If your notice was defective your recording was also defective.

The fact of the matter is, your amended recording was not a true copy because it had matters which were not in the original. Therefore, if your original notice did not comply with the law—

Mr. Painter: That is not correct, your Honor. The notices which are marked as Defendants' Exhibit KK are exact duplicates of the notices which were posted on the property. The only thing that is added thereto is that statement which is required by the statute, to-wit: The [445] statement of the discovery work performed, and if your Honor will examine that group of exhibits, No. KK, and compare them with the group A to P, you will find they are exact duplicates of A to P which were identified and were introduced only for the purpose of having before the court the exact copy of the instrument which was posted.

Now, you remember we established the making of the 16 cardboards and then the comparison of those cardboard cards with Exhibits A to P. Then we introduced Exhibits A to P simply for the purpose of establishing what was the content of each one of the notices which was posted.

The notices which were recorded on the 24th day of November were the ones which complied with the statute. Those contained—

The Court: But it was more than 30 days.

Mr. Painter: It is a 90-day period, your Honor. We have a 90-day period within which to record an instrument and correct copy of the posted notice.

Mr. Hedges: 90 days is correct, your Honor.

The Court: This evidently has been changed. Mine reads 30 days.

Mr. Painter: In other words, the situation is simply this, your Honor. The statute requires us within the 90-

day period to record an instrument and correct copy of the notice which was posted, and containing certain information. [446] By comparing Exhibits A to P and KK you will find that as far as the statutory requirements are concerned they contain everything that is required by the statute. And in addition to that contain—that is everything that was required by the statute to be contained in the posted notice, the one that was posted on the property. In addition to that there is added to the claim the statement of the work done, which is required by the statute; that the recording on November 24th was within the 90-day period.

Now, as far as the—in view of the argument which has ensued here, I think we have covered all of the points involved in regard to the recordation unless your Honor has further matters in mind that you wish me to cover.

We have established here the fact that we posted within the 90-day period—we recorded the notices of location. I don't think there is anything in the statute nor is there anything in the case law that holds that a recording on September 7th vitiates the posting. I don't know of any case that so holds.

Now, the notice which was posted on the 24th of November, after the work was completed, is the notice which your Honor must look to to see whether we complied with the statute. If it contains the things required by the statute, which I am quite sure your Honor will find after reading the statute it does, then we have complied with the provisions [447] of the Resources Code in the notices of posting and recording of our notices within the time required by the law. As to the discovery work, I don't think there could be any question about it. The purpose for which it was done was obvious. Our intention was to find what the law requires us to find

and that is whether there was something of value on that property which could be the subject of a mineral claim. The fact that we found it is the evidence of Mr. Wilson. On every claim, if your Honor will recall, they went down to, most of them, to the point where the clay became so hard that they couldn't even break it loose with the tractors on the bulldozer. They got as much out as they could with the carry-all and then they proceeded to try to break it down further with the tracks of the bulldozer. So, so far as that is concerned the work was completed pursuant to the statute.

The Court: All right, Mr. Wood.

Mr. Wood: If the court please, inasmuch as I didn't participate in the race I will eliminate from my argument anything with respect to the filings. Whether they are good, bad, or otherwise we are not interested in the filings that were made by my clients prior to September of 1945.

I did not offer any evidence on that because I believe the court would hold, and properly so, that the land having been withdrawn under the first provision of the [448] Irrigation Act, that nobody could file a mining claim on it.

We are relying, as the court knows from the evidence that has gone on, upon the inadequacy of the work that was done by both of these claimants.

The plaintiffs have offered in evidence the number of cubic yards that they moved from each one of the holes on the various quarter sections. And the difference in the yardage moved isn't sufficiently adequate to argue about if our understanding of the law is correct.

With respect to the Hammond defendants, there is a large discrepancy. Their witnesses claim that they removed approximately 400 cubic yards off of each claim.

Now, how much they paid for that work, of course, we don't know. They offered no evidence. They offered the evidence of Mr. Wilson that five days of work with a tractor and carry-all and two men moving the ground was of a value which had to be a minimum of \$2,560.00.

I am not going to argue that to the court. Our position is that they had to do the work as required by Section 2304 and by Section 2305 of the Public Resources Code.

Now, Section 2304 is not quite as clear as it might be. Subdivision (A) of that section provides that within 90 days after the date of location of any lode, mining or placer claim hereafter located, the locator or locators [449] thereof shall sink a discovery shaft upon the claim to a depth of at least 10 feet from the lowest part of the rim of the shaft at the surface, or shall drive a tunnel or an open cut to at least ten feet below the surface.

Then Subdivision (b) is an exception with reference to a placer claim and it provides that in lieu of the discovery work required by paragraph (a) of the section, the locator—I call your Honor's attention to the fact that that is in the singular, the locator of a placer mining claim may, within 90 days, and so forth, remove from the cut not less than seven cubic yards of material.

And in that connection I want to call to your Honor's attention paragraph 35 of Title 30 of the United States Code.

Down in the middle of that section it provides, in dealing with placer claims, this language:

“And no such location shall—”

reading each individual claim and then section 36:

“provided no claim shall exceed 160 acres for any person or association.”

Now, with respect to that language of one person or association, that has been held to mean that the word "person"—in other words, it provides there must be, in order to take up 160 acres, there had to be eight claimants. In other words, there had to be eight locaters and as a [450] result we find ourselves in this position. If Subdivision (b) of Paragraph 2304 is applicable rather than Subdivision (a) of Paragraph 2304 of the Public Resources Code of the State of California, these people were required, by Section 2305, to do not only a dollar's worth of work for each acre they took up, but in addition to that they were required to perform seven cubic yards of work for each 20 acres.

Now, Section 2305 of the Public Resources Code provides additional work on certain placer claims. And it provides for the recording of the claims within 90 days. It also provides that the locator shall perform at least one dollar's worth of work for each acre included in the claim. The work may all be done at one place on the claim if so desired and shall be actual mining development work exclusive of cabins and so forth.

It provides that nothing in the section shall be construed as a modification of the requirements of Section 2304.

Now, there is no evidence in this record that the plaintiffs in this action have on any single claim met the requirements of Section 2304. Their evidence is confined entirely to that required to be done by Section 2305. The same likewise applies to the Hammond defendants.

That is all we have to say.

Mr. Shirley: I would like to dispose of the last [451] argument that has been made. First, I would like to call your Honor's attention to the case of Consolidated Mutual Oil Company versus the United States. I have your Honor's volume here before me which, at page 251 in Federal (2d), reading from page 522:

"A location made by an association of persons, as said by Mr. Justice Henshaw, speaking for the Supreme Court of California in the case of Miller vs. Chrisman, 140 Calif. 440:

"by the very terms of the law, is one location covering 160 acres and not eight locations each covering 20 acres. The boundaries required to be marked are the boundaries of the 160 acres, and not the boundaries of each separate 20 acres. The expenditure of \$500.00 before patent issues is an expenditure required upon the whole land, and not an expenditure upon the 20-acre subdivisions thereof, and the only assessment work required is labor to the value of \$100.00 upon the single location, and not upon any 20-acre subdivision thereof. Logically, therefore, since in marking boundaries, doing assessment work, and expenditure for patent the 160 acres are treated as an entirety under one location, for the purpose of discovery it should be treated in the same manner; and this [452] is the ruling, with some conflict in its earlier decisions, which the Land Office of the United States has finally returned to and settled upon. In the case of Union Oil Company, 25 Law Division, 351, it is explicitly declared: "A placer location, if made by an association of persons, may include as much as 160 acres. It is nevertheless a single location, and as such only a single

discovery is by the statute required to support it." With this declaration we are in full accord.' "

Now, the next paragraph:

"Nor has Congress so far fixed any limit to the number of locations that may be made by the same person or persons—its policy having always been to encourage the exploration of the public lands and the discovery and development of such minerals as may be found in them. And it has long been the established law respecting such claims that, where two or more contiguous ones are held by the same person or persons, work done in good faith upon any one of them, or outside of the boundaries of either of them, which directly tends to the development or benefit of all of the claims for mining purposes, should be held applicable to each and all of such claims." [453]

Now, I would like to say a few words further about the Hammond claims. In the first place, I called your Honor's attention—

The Court: They refer to the Chrisman?

Mr. Shirley: Yes, 140 Cal.

The Court: But that was repudiated by Judge Stephens, Judge Harold M. Stephens, and also by Justice Miller. That is found in 97 Fed. (2d) 271. They repudiate the doctrine in the Chrisman case. That was decided in 1938.

Mr. Shirley: The point that your Honor has made I haven't any law upon so I will have to come back to it at a subsequent time.

I neglected in my opening argument to say I have a Federal case holding that the word "post" which is used to describe the manner in which you may put something on the land to file on it, does not mean a stake. It

means something of a permanent nature and I would like to cite that to your Honor as an interpretation of the word "post." I would further like to call your Honor's attention to the fact that Section 2304 of the Public Resources Code does not use the word "stake" at all. It uses the word "post." And this case of United States vs. Sherman in 288 Federal at page 497, holds that the word "post" is not the same as a stake.

I think it is somewhat ridiculous to say that the filing of a claim on a stake in the ground, driven a few [454] inches into the ground on the open desert, subject to the elements to such extent that even the one they bring into the courtroom today is so faded they cannot even tell that it has ever been signed, if it ever was in fact. The physical appearance of it is that it never was and yet they try to prove by their witnesses that it is. I think it is ridiculous to say that the precaution which we took in this matter is not in accordance with the law and the thing that they did is in accordance with the law.

Ricketts on American Mining Law says:

"It is manifest that some precaution must be taken by a locator to protect his posted notice of location from destruction by the elements. This some locators seek to do by covering such notice with glass or folding it in a box and placing the box in a conspicuous place or putting the notice in a mound of rocks or putting the notice within a tin can."

And the cases are legion to the effect that where a post is driven into the ground with the designation plainly marked upon it, printed upon it, and the glass buried beside it is a good location of property. We can submit cases to the court on that point. I don't have them here at my fingertips, but there are many cases to that

effect. I was in the library today at noon and in the Federal Digest there [455] are a number of cases where that is so held. I submit that counsel cannot produce any cases where there is a contest between the respective claims or claimants, where the posting of a notice in that fashion could be held to be good as against the posting in the fashion done by the plaintiffs in this case.

The Court: All right, gentlemen. Is there anything further you want to add?

What is the title of the case on the question of posting?

Mr. Shirley: It is United States versus Sherman, 288 Federal, 497.

The Court: What circuit?

Mr. Shirley: I don't have that, your Honor.

Mr. Painter: Would your Honor care for me to submit any memorandum on that?

The Court: No, I think this question will turn more on a question of fact than a question of law and it is for the court to determine in the light of the conflicting evidence which of the locators has made compliance with the statute, both in the manner of posting and the matter of later on performing the assessment work. It is a matter of evaluating the testimony in the light of the testimony given by the persons who performed it and the credence to be given to them. [456]

I want to thank you for the promptness and for the celerity with which you gentlemen have presented your case. You will hear from me in a few days. If there is nothing more the court will be in recess.

(Whereupon, at 4:30 o'clock p.m., the above entitled matter was concluded.)

[Endorsed]: Filed Oct. 2, 1947. Edmund L. Smith, Clerk. [457]

[Endorsed]: No. 11749. United States Circuit Court of Appeals for the Ninth Circuit. *J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker, John S. Patten, Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary C. Delaney and Irvin S. Barthel, Appellants, vs. Hattie M. Houck, as Administrator of the Estate of Stanley B. Houck, Deceased, Ruby E. Edling, Wilna M. Shepard, Hattie M. Houck, Ruth M. Heberd, Minnie N. McKenzie, Howard H. McKenzie, Veronica K. Ghostley and H. W. Lewis, Appellees.* Transcript of Record. Upon Appeals From the District Court of the United States for the Southern District of California, Central Division.

Filed October 3, 1947.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11749

STANLEY B. HOUCK, RUBY E. EDLING, WILMA
M. SHEPARD, HATTIE M. HOUCK, RUTH M.
HEBBARD, MINNIE N. McKENZIE, HOW-
ARD H. McKENZIE, and VERONICA K.
GHOSTLEY,

Plaintiffs (Appellees),

vs.

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE H. HAMMOND,
A. L. BERGERE, J. C. BERGERE, WILLARD
WALLACE, EDNA M. WALLACE, JAMES P.
DELANEY, MARY J. DELANEY, IRVIN S.
BARTHEL, R. UTTER, et al.,

Defendants (Appellants).

HARRIS H. HAMMOND, A. L. BERGERE, J. C.
BERGERE, WILLARD WALLACE, EDNA M.
WALLACE, JAMES P. DELANEY, MARY J.
DELANEY and IRVIN S. BARTHEL,

Cross-Claimants,

vs.

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER
and JOHN S. PATTEN,

Cross-Defendants.

STATEMENT OF POINTS RELIED ON BY
APPELLANTS ON APPEAL

Come now the Defendants and Cross-Claimants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna W. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel, through their attorneys, Reynolds & Painter and William W. Kaye, and the Defendants and Cross-Defendants J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten, through their attorneys, Michael F. Shannon and Thomas A. Wood, and submit the following Points on which they intend to rely on Appeal:

I.

The evidence is insufficient to support the Findings of Fact, Conclusions of Law, and Judgment.

II.

The Judgment is contrary to law.

III.

The evidence is insufficient to support the Findings of Fact that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, made a discovery on any of the claims prior to the 24th day of November, 1945.

IV.

The evidence is insufficient to support the Finding that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, complied with Sec-

tions 2304 and 2305 of the Public Resources Code of the State of California.

V.

The evidence is insufficient to support the Finding that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley located any of the claims involved prior to the location thereof by the defendants and cross-claimants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna W. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel.

VI.

The evidence is insufficient to support the Finding that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, at any time or at all, prior to the 24th day of November, 1945, did any work in or upon said claims in any manner or at all looking toward the discovery of minerals therein or thereon, or in an attempt to comply with Sections 2304 and 2305 of the Public Resources Code of the State of California.

VII.

The evidence is insufficient to support the Finding that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, made discovery of minerals in and upon said claims prior to the time that the said defendants and cross-claimants Harris H. Ham-

mond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna W. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel, made such discovery.

VIII.

That the Court erred in finding that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, expended the sum of \$1.00 per acre in and upon said claims pursuant to the requirements of Section 2305 of the Public Resources Code.

IX.

That the Court erred in finding that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, complied with the requirements of Section 2304 of the Public Resources Code of the State of California.

X.

That the Court erred in finding that on the 7th day of September, 1945, the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, were the owners and entitled to the possession of those certain lands and premises described in paragraph V of the Findings of Fact and Conclusions of Law.

XI.

That there is no evidence in the record to support Findings XI and XII of the Findings of Fact and Conclusions of Law.

XII.

That the Court erred in refusing to permit the defendants and cross-claimants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna W. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel, to introduce evidence in support of their defense, that the plaintiffs and cross-defendants Stanley B. Houck, Ruby E. Edling, Wilma M. Shepard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Howard H. McKenzie, and Veronica K. Ghostley, were and are barred from asserting any claim against the property involved in this action because of the equitable doctrine that trustees and those bearing confidential relationships to others may not take advantage of that trustee relationship to the detriment of the beneficiaries thereof.

Dated: August 8, 1947.

MICHAEL F. SHANNON and
THOMAS A. WOOD

By Charles W. Wolfe

Attorneys for Defendants and Cross-Defendants J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten

REYNOLDS & PAINTER and
WILLIAM W. KAYE

By Howard Painter

Attorneys for Defendants and Cross-Claimants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna W. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel

Received copy of the within Statement of Points Relied on by Appellants on Appeal this 9th day of October, 1947. Orris R. Hedges and Monta W. Shirley, by Orris R. Hedges, Attorneys for Plaintiffs (Appellees).

[Endorsed]: Filed Oct. 16, 1947. Paul P. O'Brien, Clerk.